

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 UNITED STATES OF AMERICA,)

4 Plaintiff,)

5 v.)

6 AMMON BUNDY (1),)

7 JON RITZHEIMER (2),)

8 JOSEPH O'SHAUGHNESSY (3),)

9 RYAN PAYNE (4),)

10 RYAN BUNDY (5),)

11 BRIAN CAVALIER (6),)

12 SHAWNA COX (7),)

13 PETER SANTILLI (8),)

14 JASON PATRICK (9),)

15 DUANE LEO EHMER (10),)

16 DYLAN ANDERSON (11),)

17 SEAN ANDERSON (12),)

18 DAVID LEE FRY (13),)

19 JEFF WAYNE BANTA (14),)

20 SANDRA LYNN ANDERSON (15),)

21 KENNETH MEDENBACH (16),)

22 BLAINE COOPER (17),)

23 WESLEY KJAR (18),)

24 COREY LEQUIEU (19),)

25 NEIL WAMPLER (20),)

JASON CHARLES BLOMGREN (21),)

DARRYL WILLIAM THORN (22),)

GEOFFREY STANEK (23),)

ERIC LEE FLORES (25),)

Defendants.)

Case No. 3:16-CR-0051-BR

March 9, 2016

Portland, Oregon

20 TRANSCRIPT OF PROCEEDINGS
21 (Status Conference)

22 BEFORE THE HONORABLE ANNA J. BROWN, DISTRICT JUDGE

1 COURT REPORTER: AMANDA M. LeGORE
2 CSR, RDR, FCRR, CRR, CE
3 U.S. Courthouse
4 1000 SW Third Avenue Suite 301
Portland, OR 97204
(503)326-8184

5 APPEARANCES:
6 FOR THE PLAINTIFF: CRAIG GABRIEL
7 GEOFFREY BARROW
8 ETHAN KNIGHT
9 Assistant U.S. Attorneys
U.S. Attorney's Office
1000 SW Third Avenue
Portland, OR 97204
(503)727-1000

10 FOR DEFENDANT AMMON
11 BUNDY: LISSA CASEY
12 MICHAEL ARNOLD
13 Arnold Law Office, LLC
401 E 10th Avenue, Suite 400
Eugene, OR 97401
(541)338-9111

14 FOR DEFENDANT JON
15 RITZHEIMER: TERRI WOOD
16 730 Van Buren Street
Eugene, OR 97402
(541)484-4171

17 FOR DEFENDANT JOSEPH
18 O'SHAUGHNESSY: AMY BAGGIO
19 (defendant not present) 621 SW Morrison, Suite 1025
Portland, OR 97205
(503)222-9830

20
21 FOR DEFENDANT RYAN
22 PAYNE: LISA HAY
23 Assistant Federal Defender
101 SW Main Street, Suite 1700
Portland, OR 97204
24 (503)326-2123
25

1 FOR DEFENDANT RYAN
2 BUNDY:

ANDREW BATES
1001 SW Fifth Avenue, Suite 1400
Portland, OR 97204
(503)228-3608

4
5 FOR DEFENDANT BRIAN
6 CAVALIER:

TODD BOFFERDING
1215 B Street
PO Box 539
Hood River, OR 97031
(541)490-9012

8
9 FOR DEFENDANT SHAWNA
10 COX:
(defendant present
telephonically)

TIFFANY HARRIS
121 SW Salmon Street, Suite 1420
Portland, OR 97204
(503)546-2927

11
12 FOR DEFENDANT PETER
13 SANTILLI:

THOMAS COAN
1000 SW Fifth Avenue, Suite 1400
Portland, OR 97204
(503)221-8736

14
15
16 FOR DEFENDANT JASON
PATRICK:

ANDREW KOHLMETZ
Raivio, Kohlmetz & Steen, PC
741 SW Lincoln Street
Portland, OR 97201
(503)224-1104

17
18
19 FOR DEFENDANT DUANE
20 EHMER:

DAVID AUDET
249 NE Lincoln
Hillsboro, OR 97124
(503)648-3020

21
22 FOR DEFENDANT DYLAN
23 ANDERSON:

JAMIE KILBERG
Kauffman Kilberg, LLC
1001 SW 5th Avenue, Suite 1414
Portland, OR 97204
(503)224-2595

24
25

1 APPEARANCES: (continuing)
FOR DEFENDANT SEAN

2 ANDERSON: MATTHEW McHENRY
Levine & McHenry, LLC
3 1001 SW Fifth Avenue, Suite 1414
Portland, OR 97204
4 (503)546-3927

5 FOR DEFENDANT DAVID
6 FRY:

PER OLSON
Hoebet Olson Howes, PC
1000 SW Broadway, Suite 1500
7 Portland, OR 97205
(503)228-0497

8 FOR DEFENDANT JEFF
9 BANTA:
(defendant not present)

MATTHEW SCHINDLER
(for Mr. Salisbury)
501 4th Street #324
Lake Oswego, OR 97034
11 (503)699-7333

12 FOR DEFENDANT SANDRA
13 ANDERSON:
(defendant not present)

TYL BAKKER
621 SW Alder Street, Suite 621
Portland, OR 97205
14 (503)721-0140

15 FOR DEFENDANT
16 KENNETH MEDENBACH:

MATTHEW SCHINDLER
501 4th Street #324
Lake Oswego, OR 97034
17 (503)699-7333

18
19 FOR DEFENDANT BLAINE
COOPER:

KRISTA SHIPSEY
820 SW 2nd Avenue, Suite 275
Portland, OR 97204
21 (503)309-9024

22 FOR DEFENDANT WESLEY
23 KJAR:
(defendant not present)

JAMES HALLEY
735 SW First Avenue, 2nd Floor
Portland, OR 97204
24 (503)295-0301
25

1 APPEARANCES: (continuing)
FOR DEFENDANT COREY

2 LEQUIEU: RAMON PAGAN
121 SW Salmon Street, 11th Floor
3 PMB #1195
Portland, OR 97204
4 (971)270-0421

5 FOR DEFENDANT NEIL

6 WAMPLER: LISA MAXFIELD
(defendant not present) Pacific Northwest Law, LLP
1420 World Trade Center
7 121 SW Salmon
Portland, OR 97204
8 (503)222-2661

9 FOR DEFENDANT JASON

10 BLOMGREN: ROBERT RAINWATER
Rainwater Law Group
1327 SE Tacoma, Suite 239
11 Portland, OR 97202
(971)271-7566

12 FOR DEFENDANT DARRYL

13 THORN: LAURIE SHERTZ
121 SW Salmon Street, 11th Floor
14 Portland, OR 97204
(503)406-2136

15 FOR DEFENDANT GEOFFREY

16 STANEK: BEN ANDERSEN
101 SW Madison Street, #9068
17 Portland, OR 97207
(503)860-2531

18 FOR DEFENDANT ERIC

19 FLORES: ERNEST WARREN JR.
(defendant not present) Warren & Sugarman
838 SW First Avenue, Suite 500
20 Portland, OR 97204
21 (503)228-6655

22

23

24

25

(March 9, 2016; 9:18 a.m.)

P R O C E E D I N G S

THE COURT: Good morning, everyone. Please be seated.

THE AUDIENCE: Good morning.

THE COURT: Mr. Knight.

MR. KNIGHT: Good morning, your Honor. We're present in the matter of the United States versus Ammon Bundy, et al. This is Case No. 16-CR-0051. Ethan Knight, Jeff Barrow, and Craig Gabriel are appearing on behalf of the United States, your Honor.

We're here today for an arraignment on a Superseding Indictment and a status conference. The Government is also prepared at this time to announce the presence and representation of the parties listed in the Indictment.

THE COURT: Yes. Before you do that, I want to note that I received this morning and have granted a motion to lift the seal on the Indictment in the form indicated. So please proceed.

MR. KNIGHT: Thank you, your Honor.

Proceeding in the order in the Indictment, announcing the presence of the parties at today's hearing, your Honor, Defendant Ammon Bundy is present with counsel, Lissa Casey and

1 Michael Arnold, in custody.

2 Defendant John Ritzheimer is present with counsel
3 Terri Wood, in custody.

4 Defendant Joseph O'Shaughnessy has waived his
5 appearance before this Court. Counsel for Mr. O'Shaughnessy,
6 Amy Baggio, is present.

7 Defendant Ryan Payne is present with counsel Lisa
8 Hay, and is in custody.

9 Defendant Ryan Bundy is present with counsel Andrew
10 Bates, and is in custody.

11 Defendant Brian Cavalier is present with counsel Todd
12 Bofferding, and is in custody.

13 Defendant Shawna Cox has waived her personal
14 appearance. Is appearing today by phone. Her counsel, Tiffany
15 Harris, is present in the courtroom.

16 THE COURT: And where is she located?

17 MS. HARRIS: (Standing.) Good morning. Your Honor.

18 THE COURT: Oh, there you are. Good morning.

19 Go ahead.

20 MR. KNIGHT: Your Honor, Peter Santilli is present in
21 custody with counsel Thomas Coan.

22 MR. COAN: Good morning, your Honor.

23 THE COURT: Good morning.

24 MR. KNIGHT: Defendant Jason Patrick is present, in
25 custody, with counsel Andrew Kohlmetz.

1 MR. KOHLMETZ: Good morning, your Honor.

2 DEFENDANT PATRICK: Good morning.

3 MR. KNIGHT: Defendant Duane Ehmer is present, out of
4 custody, with counsel Dave Audet.

5 Defendant Dylan Anderson is present with counsel
6 Jamie Kilberg.

7 David Sean Anderson is present with counsel, Matthew
8 McHenry, in the courtroom.

9 Defendant David Fry is present with counsel Per
10 Olson, and is appearing in custody.

11 Defendant Jeff Banta has waived his personal
12 appearance today. Appearing on behalf of counsel-of-record
13 Robert Salisbury is Matthew Schindler.

14 MR. SCHINDLER: Good morning, your Honor.

15 THE COURT: Where are you?

16 MR. SCHINDLER: Right here (raising hand).

17 THE COURT: There you are. Okay. Thank you.

18 MR. KNIGHT: Defendant Sandra Anderson has waived her
19 appearance today.

20 Counsel of record, Tyl Bakker, is present.

21 MR. BAKKER: Good morning, your Honor.

22 THE COURT: Good morning.

23 MR. KNIGHT: Defendant Kenneth Medenbach is present
24 with counsel Matthew Schindler. He is in custody.

25 Defendant Blaine Cooper is present --

1 THE DEFENDANT: Good morning, your Honor.

2 THE COURT: -- present in custody, with counsel
3 Krista Shipsey.

4 Defendant Wesley Kjar has waived his appearance at
5 today's hearing. Counsel of record, James Halley, is present.

6 MR. HALLEY: Good morning, your Honor.

7 THE COURT: Good morning.

8 MR. KNIGHT: Defendant Corey Lequieu is present in
9 custody with counsel Ramon Pagan.

10 MR. PAGAN: Good morning, your Honor.

11 DEFENDANT LEQUIEU: Good morning, your Honor.

12 THE COURT: Good morning.

13 MR. KNIGHT: Defendant Neil Wampler has waived his
14 personal appearance today. Counsel of record, Lisa Maxfield,
15 is here.

16 THE COURT: Where is she?

17 Good morning.

18 (Ms. Maxfield standing.)

19 MR. KNIGHT: Defendant Jason Blomgren is present, in
20 custody, with counsel Robert Rainwater.

21 DEFENDANT BLOMGREN: Good morning.

22 MR. KNIGHT: Defendant Darryl Thorn is present, in
23 custody, with counsel Laurie Shertz.

24 MS. SHERTZ: Good morning, your Honor.

25 THE COURT: Good morning.

1 MR. KNIGHT: Defendant Geoffrey Stanek is present out
2 of custody with counsel Benjamin Anderson.

3 THE COURT: Good morning.

4 MR. KNIGHT: And finally, your Honor, Defendant Eric
5 Flores has waived his personal appearance today. Counsel Ernie
6 Warren is present.

7 MR. WARREN: Good morning.

8 THE COURT: Good morning.

9 Thank you. Go ahead and proceed with the
10 arraignment.

11 MR. KNIGHT: Thank you, your Honor.

12 A Superseding Indictment has been presented to all
13 the parties, both under seal last night via e-mail. It also
14 has been provided in hard copy form this morning. It's our
15 understanding the Court has now unsealed that Indictment. The
16 Government is prepared to proceed on the Indictment.

17 It's my understanding that a reading has not been
18 waived.

19 THE COURT: Then proceed with that, please.

20 MR. KNIGHT: Thank you.

21 The Government will now read the Superseding
22 Indictment.

23 Omitting the initial caption, starting with Count 1
24 of the Indictment, Count 1 alleges a Conspiracy to Impede
25 Officers of the United States in violation of 18 United States

1 Code Section 372 as follows:

2 On or about November 5th, 2015, and continuing
3 through February 12th, 2016, in the District of Oregon,
4 Defendants Ammon Bundy, John Ritzheimer, Joseph O'Shaughnessy,
5 Ryan Payne, Ryan Bundy, Brian Cavalier, Shawna Cox, Peter
6 Santilli, Jason Patrick, Duane Ehmer, Dylan Anderson, Sean
7 Anderson, David Lee Fry, Jeff Wayne Banta, Sandra Lynn
8 Anderson, Kenneth Medenbach, Blaine Cooper, Wesley Kjar, Corey
9 Lequieu, Neil Wampler, Jason Charles Blomgren, Darryl William
10 Thorn, Geoffrey Stanek, Travis Cox, Eric Lee Flores, and
11 redacted individual, did knowingly and willfully conspire and
12 agree together and with each other and with persons known and
13 unknown to the grand jury to prevent by force, intimidation,
14 and threats officers and employees of the United States Fish &
15 Wildlife Service and the Bureau of Land Management, agencies
16 within the United States Department of Interior, from
17 discharging the duties of their office at the Malheur National
18 Wildlife Refuge and other locations in Harney County, Oregon,
19 in violation of Title 18 United States Code 372.

20 In furtherance of the conspiracy and to effect the
21 illegal objects thereof, one or more of the defendants and one
22 or more of the conspirators performed the following overt acts
23 in the District of Oregon and elsewhere, including but not
24 limited to the following:

25 (A) On or about November 5th, 2015, Ammon Bundy and

1 Ryan Payne traveled to Harney County, Oregon, to warn the
2 Harney County sheriff of, quote, extreme civil unrest if
3 certain demands were not met.

4 (B) Beginning in or about November of 2015,
5 defendants and conspirators recruited and encouraged other
6 individuals known and unknown to the grand jury, in person and
7 through social media and other means of communication, to
8 participate and assist in the above-described conspiracy.

9 (C) In or about November 2015, continuing through
10 January 26th of 2016, defendants and conspirators traveled to
11 Harney County, Oregon, to intimate and coerce the population of
12 Harney County, Oregon, in order to effectuate the goals of the
13 conspiracy.

14 (D) Beginning on December 15th, 2015, defendants and
15 conspirators brandished and carried firearms throughout Harney
16 County, Oregon, in order to effectuate the goals of the
17 conspiracy.

18 (E) Beginning on January 2nd, 2016, defendants and
19 conspirators occupied the Malheur National Wildlife Refuge by
20 force while using and carrying firearms.

21 (F) Beginning on January 2nd, 2016, defendants and
22 conspirators brandished and carried firearms on the premises of
23 the Malheur National Wildlife Refuge and prevented federal
24 officials from performing their official duties by force,
25 threats, and intimidation.

1 (G) Beginning on January 2nd, 2016, defendants and
2 conspirators refused to leave the Malheur National Wildlife
3 Refuge and allow federal officials to return to their official
4 duties.

5 (H) Beginning on January 2nd, 2016, defendants and
6 conspirators threatened violence against anybody who attempted
7 to remove them from the Malheur National Wildlife Refuge.

8 Count 2, Possession of Firearms and Dangerous Weapons
9 in Federal Facilities, 18 United States Code Sections 930(b)
10 and 2.

11 On or about January 2nd, 2016, and continuing through
12 February 12th of 2016, in the District of Oregon, Defendants
13 Ammon Bundy, John Ritzheimer, Ryan Payne, Ryan Bundy, Brian
14 Cavalier, Shawna Cox, Jason Patrick, Dylan Anderson, Sean
15 Anderson, David Lee Fry, Jeff Wayne Banta, Sandra Lynn
16 Anderson, Wesley Kjar, Corey Lequieu, Jason Charles Blomgren,
17 Darryl William Thorn, Geoffrey Stanek, Travis Cox, Eric Lee
18 Flores, and redacted individual, aided and abetted by each
19 other and by others known and unknown to the grand jury, did
20 knowingly possess or cause to be present a firearm or dangerous
21 weapon in a federal facility located at the Malheur National
22 Wildlife Refuge, and counseled, commanded, induced, and
23 procured the commission thereof with the intent that the
24 firearm or dangerous weapon be used in the commission of a
25 crime; to wit: 18 United States Code Section 372, Conspiracy

1 to Impede Officers of the United States in violation of Title
2 18 United States Code Sections 930(b) and 2.

3 Count 3, Use and Carry of a Firearm in Relation to a
4 Crime of Violence, 18 United States Code Sections 924(c)(1)(A)
5 and 2.

6 On or about January 2nd, 2016, and continuing through
7 February 12th of 2016, in the District of Oregon, Defendants
8 Ammon Bundy, John Ritzheimer, Ryan Payne, Ryan Bundy, Brian
9 Cavalier, Jason Patrick, Sean Anderson, David Lee Fry, and
10 Corey Lequieu, aided and abetted by each other and by others
11 known and unknown to the grand jury, did knowingly use and
12 carry firearms during and in relation to a crime of violence
13 for which they may be prosecuted in a court of the United
14 States. That is, Conspiracy to Impede Officers of the United
15 States, in violation of 18 United States Code Section 372. And
16 counseled, commanded, induced each other and procured the
17 commission thereof, in violation of Title 18 United States Code
18 Sections 924(c)(1)(A) and 2.

19 Count 4, Theft of Government Property, 18 United
20 States Code Section 641.

21 On or about January 15th, 2016, in the District of
22 Oregon, Defendant Kenneth Medenbach willfully and knowingly did
23 steal, convert, purloin, and convert for his own use a 2012
24 Ford F350 truck, license plate I581021, the value of which
25 exceeded 1,000 dollars, which is property of the United States

1 Government, United States Fish & Wildlife Service, in violation
2 of Title 18 United States Code Section 641.

3 Count 5, Theft of Government Property, 18 United
4 States Code Section 641.

5 On or about January 15th, 2016, in the District of
6 Oregon, Defendants John Ritzheimer and Ryan Bundy willfully and
7 knowingly did steal, purloin, and convert to their own use and
8 the use of another cameras and related equipment, the value of
9 which exceeded a thousand dollars, which is property of the
10 United States Government, in violation of Title 18 United
11 States Code Section 641.

12 Count 6, Depredation of Government Property, 18
13 United States Code Sections 1361 and 2.

14 On or about January 27th, 2016, in the District of
15 Oregon, Defendants Sean Anderson and name redacted, aided and
16 abetted by each other, did willfully and by means of excavation
17 and the use of heavy equipment on the lands of the Malheur
18 National Wildlife Refuge, property of the United States, injure
19 and commit a depredation against such property, specifically an
20 archaeological site considered sacred to the Burns Paiute
21 Tribe, resulting in damage in an amount exceeding 1,000
22 dollars, in violation of Title 18 United States Code Sections
23 1361 and 2.

24 Dated this 8th day of March 2016. Underlying
25 captions omitted.

1 THE COURT: Thank you, Mr. Knight.

2 Please state the maximum penalties for each of the
3 charges in this proceeding.

4 MR. KNIGHT: Thank you, your Honor.

5 On Count 1, 18 U.S.C. 372, the maximum penalties are
6 six years imprisonment, a fine of 250,000 dollars, a three-year
7 term of supervised release.

8 On Count 2, 18 U.S.C. 930(b), the maximum penalty is
9 a five-year term of imprisonment a 250,000 dollar fine, and a
10 three-year term of supervised release.

11 On Count 3, 924(c), the maximum term under that
12 statute is life imprisonment and a five-year term of supervised
13 release, and I believe a 500,000 dollar fine.

14 Counts 5 -- 4 and 5, 18 U.S.C. 641, as alleged, the
15 maximum term of imprisonment is ten years, a 250,000 dollar
16 fine, and a three-year term of supervised release.

17 Count 6, allegation of U.S. -- 18 U.S.C. 1361, the
18 maximum statutory penalty is a ten-year term of imprisonment,
19 250,000 dollar fine, and a three-year term of supervised
20 release.

21 THE COURT: Mr. Knight, please confirm for me,
22 Defendant Travis Cox has not yet made any initial appearance?

23 MR. KNIGHT: That is correct, your Honor.

24 THE COURT: Every other person named as a defendant,
25 except for the person identified as name redacted on this

1 record, has made a first appearance and has been advised of
2 constitutional rights at least once?

3 MR. KNIGHT: Yes, your Honor.

4 THE COURT: All right. So it does not appear to me
5 that a repeat of the advice of rights is warranted, so let's
6 proceed now with entry of plea or response by each defendant.

7 Would you go ahead, Mr. Knight, since you've read the
8 names so well thus far, please go through in order so that we
9 can get entries of pleas and any comment by each counsel for
10 each defendant of those personally appearing and those who have
11 waived appearance.

12 MR. KNIGHT: Thank you.

13 The first named defendant, your Honor, is Ammon
14 Bundy.

15 THE COURT: Good morning, Counsel.

16 MR. ARNOLD: Good morning, your Honor. Mike Arnold
17 in this case for Mr. Bundy.

18 He acknowledges the reading of the Indictment. He
19 will proceed as named. He'll enter a not guilty plea. He'll
20 request a reading of his rights. And that's all we have, your
21 Honor.

22 THE COURT: Is there a requirement that I read his
23 rights yet another time? He's already had them read to him on
24 at least three occasions I note in the record.

25 MR. ARNOLD: Not that I'm aware of, your Honor.

1 THE COURT: Then I think that's noted for the record.

2 Thank you, sir. Go ahead and be seated.

3 DEFENDANT AMMON BUNDY: I know I have no rights, so

4 thank you.

5 THE COURT: Counsel.

6 MR. KNIGHT: Thank you.

7 Next named defendant, your Honor, is John Ritzheimer.

8 MS. WOOD: Your Honor, Terri Wood appearing with

9 Mr. Ritzheimer.

10 THE COURT: Good morning.

11 MS. WOOD: He will -- good morning. He will proceed

12 as named. He'll enter not guilty pleas to all counts and

13 continue to assert his rights to speedy trial.

14 THE COURT: Thank you.

15 MR. KNIGHT: Your Honor, next named defendant is

16 Joseph O'Shaughnessy. He has executed a waiver of appearance.

17 Counsel, Amy Baggio, is present.

18 THE COURT: Ms. Baggio.

19 MS. BAGGIO: Good morning.

20 THE COURT: Was the waiver of appearance sufficient

21 in your view for you to respond to the Superseding Indictment?

22 MS. BAGGIO: No, your Honor.

23 THE COURT: All right. Then we'll deal with an

24 arraignment on another occasion for your client on the

25 Superseding Indictment.

1 Let's, Counsel, please keep track of who all needs to
2 be scheduled for another arraignment proceeding.

3 Go ahead.

4 MR. KNIGHT: Thank you, your Honor.

5 The next named defendant is defendant Ryan Payne.
6 Counsel, Lisa Hay, is present.

7 THE COURT: Ms. Hay, good morning.

8 MS. HAY: Good morning, your Honor. Lisa Hay for
9 Ryan Payne. He's prepared to proceed as named in the
10 Indictment, enter pleas of not guilty to the three counts on
11 which he's named.

12 THE COURT: Thank you.

13 MS. HAY: Thank you.

14 THE COURT: Go ahead and have a seat.

15 MR. KNIGHT: Your Honor, next named defendant is Ryan
16 Bundy, present with counsel Andrew Bates.

17 MR. BATES: Good morning, your Honor.

18 THE COURT: Good morning.

19 MR. BATES: Andrew Bates representing Mr. Ryan Bundy.
20 He's prepared to proceed as named and enter not guilty pleas on
21 all counts as named.

22 I would mention, your Honor, that Mr. Bundy --
23 Mr. Ryan Bundy has decided to represent himself. He would like
24 to retain me as a legal advisor, so we will need to set up a
25 **Faretta** hearing to accomplish that goal.

1 THE COURT: We will note that, and we'll schedule a
2 **Faretta** hearing for you and your client.

3 MR. BATES: If we could do that at the end of next
4 week, that would give me some time to consult with him.

5 THE COURT: So you're requesting no earlier than the
6 end of next week?

7 MR. BATES: That's correct, your Honor.

8 THE COURT: All right.

9 MR. BATES: Thank you.

10 THE COURT: Go ahead.

11 MR. KNIGHT: Your Honor, the next defendant is Brian
12 Cavalier.

13 THE COURT: Good morning.

14 MR. BOFFERDING: Good morning, your Honor. Todd
15 Bofferding for Mr. Cavalier. We'll proceed as named, plead not
16 guilty as to the counts as to which Mr. Cavalier is named.

17 THE COURT: Thank you.

18 Go ahead.

19 MR. KNIGHT: Your Honor, the next named defendant is
20 Shawna Cox, who is appearing by phone. Counsel of record,
21 Tiffany Harris, is present.

22 THE COURT: Ms. Harris, have you had an opportunity
23 to review the Superseding Indictment with your client relative
24 to the waiver of appearance?

25 MS. HARRIS: Yes, your Honor, we have.

1 THE COURT: And does she still waive the personal
2 appearance for purposes of arraignment on the Superseding
3 Indictment?

4 MS. HARRIS: That is my understanding, your Honor. I
5 know that she understood that there could be an arraignment
6 scheduled for today.

7 THE COURT: All right. Then go ahead with the entry
8 of plea, please.

9 MS. HARRIS: Your Honor, she'll proceed as truly
10 named. I know there were some reservations of rights made
11 clear on the record at the previous proceeding. I know it
12 would be important for my client to have me reserve all of
13 those rights under the U.S. Constitution yet again at this
14 hearing. I'm doing that on her behalf. And with those
15 reservations clear, she will enter pleas of not guilty and
16 request a jury trial.

17 THE COURT: Thank you.

18 I'll simply note for the record a jury trial is
19 presumed and requested for all defendants. And as was just
20 noted, some rights have been reserved previously. They
21 continue to be reserved unless and until they're given up.

22 Thank you, Counsel.

23 Go ahead.

24 MR. KNIGHT: Your Honor, the next named defendant is
25 Peter Santilli, present.

1 THE COURT: Good morning.

2 MR. COAN: Good morning, your Honor. Tom Coan here
3 with Mr. Santilli. He will proceed as named and enter not
4 guilty pleas to Count 1.

5 THE COURT: Thank you.

6 MR. COAN: Thank you.

7 THE COURT: Go ahead.

8 MR. KNIGHT: Next named defendant is Jason Patrick.

9 MR. KOHLMETZ: Good morning, your Honor. Mr. Patrick
10 will proceed as named, with reservation of rights, and enter
11 pleas of not guilty.

12 THE COURT: Thank you.

13 DEFENDANT PATRICK: For the ones that don't exist,
14 right.

15 MR. KNIGHT: The next named defendant, your Honor, is
16 Duane Ehmer.

17 THE COURT: Good morning.

18 MR. AUDET: Good morning, your Honor. Dave Audet
19 here with Mr. Emmer this morning.

20 We'll also proceed as named, enter a plea of not
21 guilty.

22 THE COURT: Thank you.

23 MR. KNIGHT: Next named defendant is Dylan Anderson.

24 MR. KILBERG: Good morning, your Honor. Jamie
25 Kilberg appearing on behalf of Mr. Anderson.

1 Mr. Anderson will proceed as named and enter a plea
2 of not guilty on Counts 1 and 2.

3 THE COURT: Thank you.

4 MR. KNIGHT: Next named defendant is Sean Anderson.

5 MR. McHENRY: Good morning, your Honor. Matthew
6 McHenry here with Mr. Anderson.

7 THE COURT REPORTER: I need you to keep your voice
8 up, please.

9 MR. McHENRY: He will proceed as named and enter
10 pleas of not guilty to the four counts as --

11 THE COURT: Thank you, Mr. McHenry.

12 MR. KNIGHT: Next named defendant is David Fry.

13 MR. OLSON: Good morning, your Honor. Per Olson here
14 with Mr. Fry.

15 THE COURT: Keep your voice up, please, so we can all
16 hear.

17 MR. OLSON: Mr. Fry would proceed as named and enter
18 not guilty pleas.

19 THE COURT: Thank you, Mr. Olson, Mr. Fry.

20 MR. KNIGHT: Thank you, your Honor.

21 The next named defendant is Jeff Banta. Appearing on
22 Mr. Banta's behalf -- he has waived appearance -- is Matthew
23 Schindler.

24 THE COURT: Good morning, sir.

25 MR. SCHINDLER: Good morning, your Honor. Here on

1 behalf of Mr. Banta. We're prepared to proceed as named with
2 the Indictment, waive any advice of rights, and enter a plea of
3 not guilty.

4 I believe, based on the waiver of appearance that was
5 filed, it's satisfactory for me to appear on that arraignment
6 here this morning.

7 THE COURT: And his assigned counsel of record, for
8 whom you're appearing, is --

9 MR. SCHINDLER: Is Robert Salisbury, your Honor.

10 THE COURT: Thank you.

11 MR. KNIGHT: Your Honor, the next named defendant is
12 Sandra Anderson. Her appearance has been waived today.
13 Counsel of record, Tyl Bakker, is present.

14 THE COURT: Mr. Bakker, do you think the waiver
15 previously filed is sufficient for purposes of this Superseding
16 Indictment, just --

17 MR. BAKKER: I do, your Honor, on behalf of
18 Ms. Anderson. I've also had an opportunity to read the
19 Superseding Indictment to her. She is truly named. Her name
20 is spelled correctly. We would enter a not guilty plea.
21 Reserve the right to move against the charging instrument or
22 file appropriate motions or notices at a later time, and
23 request a trial date.

24 THE COURT: Thank you.

25 Go ahead.

1 MR. KNIGHT: Your Honor, the next named defendant is
2 Kenneth Medenbach.

3 DEFENDANT MEDENBACH: Good morning, your Honor. This
4 Court has still failed to prove its jurisdiction.

5 THE COURT: Excuse me, Mr. Medenbach. I won't take
6 up those kinds of assertions at this hearing. I previously
7 noted that if you wish to represent yourself, you need to file
8 a motion and ask for a **Faretta** hearing. Until you do,
9 Mr. Schindler will speak for you.

10 Mr. Schindler.

11 MR. SCHINDLER: Thank you, your Honor.

12 Mr. Medenbach is not prepared to enter a plea today
13 and would ask the Court to enter one on his behalf.

14 We are scheduled for a **Faretta** hearing for tomorrow.
15 He has been representing himself relative to the other docketed
16 matter in this case and, up to this point, has been
17 representing himself on this matter as well.

18 THE COURT: He's been doing what he's been doing. I
19 can't note a waiver of that right until I've had the
20 opportunity for Mr. Medenbach and I to speak about all of the
21 features of the requirements under the **Faretta** case. So we'll
22 address those more particularly tomorrow.

23 I will enter a not guilty plea on his behalf, noting
24 that there was a declining to enter any plea at this time.

25 Thank you, gentlemen.

1 MR. KNIGHT: Your Honor, the next named defendant is
2 Blaine Cooper.

3 MS. SHIPSEY: Good morning, your Honor. Krista
4 Shipsey on behalf of Mr. Cooper. He will proceed as named and
5 enter a not guilty plea to the count.

6 THE COURT: Thank you, Counsel, and Mr. Cooper.

7 MR. KNIGHT: Your Honor, the next named defendant is
8 Wesley Kjar. His appearance has been waived today. Counsel of
9 record, Jim Halley, is present.

10 THE COURT: Mr. Halley, is your client's waiver
11 sufficient to allow you to proceed with the arraignment this
12 morning?

13 MR. HALLEY: I don't believe so, your Honor. I was
14 unaware of the arraignment at the time that that waiver was
15 prepared, signed, and filed. And I haven't reviewed the
16 Indictment with him.

17 THE COURT: All right. Then we will schedule a
18 separate proceeding for you and your client, and
19 Mr. O'Shaughnessy and his counsel.

20 Go ahead.

21 MR. HALLEY: Thank you, your Honor.

22 MR. KNIGHT: Your Honor, next defendant is Corey
23 Lequieu.

24 THE COURT: Good morning.

25 MR. PAGAN: Good morning, your Honor. Ramon Pagan

1 for Mr. Lequieu.

2 THE COURT: A little louder, please.

3 MR. PAGAN: Sorry, your Honor. Ramon Pagan appearing
4 for Mr. Lequieu. Proceed as named. Enter a plea of not guilty
5 at this time, your Honor.

6 THE COURT: Thank you.

7 MR. KNIGHT: Your Honor, the next defendant is Neil
8 Wampler. His appearance has been waived today. Counsel of
9 record, Lisa Maxfield, is present.

10 THE COURT: Good morning, Ms. Maxfield.

11 MS. MAXFIELD: Good morning, your Honor.

12 Your Honor, my client's -- I have not had the
13 opportunity to review this new Indictment with my client, so he
14 would probably need to be scheduled for --

15 THE COURT: All right. So we will put him in the
16 group with the other two defendants who need another
17 opportunity for arraignment.

18 Go ahead, Counsel.

19 MR. KNIGHT: Next named defendant, your Honor, is
20 Jason Blomgren, present today.

21 THE COURT: Good morning, Mr. Rainwater.

22 MR. RAINWATER: Your Honor, Robert Rainwater on
23 behalf of Mr. Blomgren. His name is set forth correctly on the
24 Indictment, and we enter a plea of not guilty.

25 THE COURT: Thank you.

1 MR. KNIGHT: Next named defendant is Darryl Thorn,
2 present with counsel.

3 MS. SHERTZ: Good morning, your Honor.

4 We'll proceed as named and enter a not guilty plea to
5 Counts 1 and 2, to which he's named, and request a jury trial.

6 THE COURT: Thank you.

7 MR. KNIGHT: Next named defendant is Geoffrey Stanek,
8 present out of custody, with counsel.

9 THE COURT: Good morning.

10 MR. ANDERSEN: Your Honor, we have reviewed the
11 Indictment. We acknowledge the reading of that, just moments
12 before. We'll enter not guilty pleas on the two counts he is
13 named in. He is correctly named.

14 We would reserve all of the rights, as has been
15 stated a few times on the record.

16 THE COURT: Thank you.

17 MR. KNIGHT: And lastly, your Honor, Eric Flores.
18 His appearance has been waived today. Counsel of record,
19 Mr. Warren, is present.

20 THE COURT: Mr. Warren, do you believe the waiver
21 addresses sufficiently the Superseding Indictment?

22 Can you proceed on the arraignment now, or do you
23 need to be grouped with the others?

24 MR. WARREN: Your Honor, I can proceed on the
25 arraignment now. I actually filed a separate waiver as to this

1 Superseding Indictment and consulted with my client yesterday,
2 before he left the District of Oregon.

3 THE COURT: All right. So he's entering a plea of
4 not guilty?

5 MR. WARREN: Yes.

6 THE COURT: Proceeding as named?

7 MR. WARREN: Yes. Yes, ma'am.

8 THE COURT: All right. Thank you.

9 All right. Jury trial is requested for all
10 defendants and will be scheduled as part of today's
11 proceedings.

12 Mr. Knight, does that sufficiently address the
13 arraignment process for all for whom we can proceed today?

14 MR. KNIGHT: Yes. Thank you, your Honor.

15 THE COURT: I want to move now to the matter of
16 setting a trial date, which necessarily involves considering
17 the Government's motion, which is Docket 185, to designate the
18 case as complex.

19 There has been briefing on the motion, arguments
20 submitted on both sides. I want to give a brief opportunity to
21 supplement that record with any other argument on the question
22 of complexity. Much of the defendants' response, which
23 Mr. Kohlmetz submitted on behalf of the joint interests,
24 addressed the assertion that the Government's arguments were
25 speculative, inasmuch as new charges have not yet been filed.

1 Those, of course, now have been filed, so I'm
2 interested in an updated position from defendants on the
3 complexity issue. But, first, for the Government, is there any
4 other matter that needs to be noted for the record in support
5 of Motion 185?

6 MR. KNIGHT: Nothing additional, your Honor.

7 THE COURT: All right. Mr. Kohlmetz, do you wish to
8 address the motion?

9 MR. KOHLMETZ: Your Honor, I think Ms. Hay was
10 prepared to do that.

11 THE COURT: All right. I'm sorry. Ms. Hay?

12 MS. HAY: Thank you, your Honor.

13 Your Honor, Mr. Kohlmetz did file one response to the
14 Government's. And then in our status report, our case
15 management status report, we also referred to the complex case
16 issue.

17 THE COURT: Yes.

18 MS. HAY: The Government has not put forward evidence
19 that -- on which the Court could rely to find the cases
20 complex. They submitted arguments in their briefing, so we had
21 requested actual evidence to support their claim.

22 In particular, your Honor, they refer to the volume
23 and scope of discovery as being the most complicated in the
24 history of the district. Now that we see the Superseding
25 Indictment, it doesn't appear that these are the type of claims

1 on which -- that should create so much discovery.

2 I understand the Government's collecting social media
3 and intends to present that to the defense, but that seems to
4 be an effort by the Government to collect more evidence to use
5 against our clients.

6 We're not interested in having our clients' speedy
7 trial rights delayed, so that the Government can go collect
8 more evidence. I don't think that's an appropriate basis on
9 which the Court should delay the trial.

10 The second factor the Government cites is the number
11 of defendants. They have added more defendants to the case,
12 including defendants who have not yet been arraigned. Clearly
13 a motion to sever is a likely outcome here, so that we don't
14 have -- all of these defendants have their speedy trial rights
15 delayed by the presence of people who have not yet even been
16 arraigned.

17 And in particular, your Honor, I wanted to note the
18 difficulty that's been created by the Nevada Indictment that
19 came after this one.

20 There are now defendants charged in this case who are
21 in the custody of the Nevada authorities. I'm assuming that
22 that court is unlikely to release them to come here for trial,
23 but their failure -- their lack of presence in this district
24 might delay the trial date for our clients. So --

25 THE COURT: So let's stop for a moment, just so that

1 I can track which defendants are in the Nevada case. There's
2 nothing formally in this record that identifies that, and I
3 want to be a little more careful in understanding your argument
4 about its implications for the complexity issue here.

5 So who among the existing defendants are named in the
6 Nevada proceedings? Do you know?

7 MS. HAY: Your Honor, I understand that Defendant
8 No. 3, Joseph O'Shaughnessy, is named in the Nevada
9 proceedings. That he's been released from this court. And my
10 understanding is he may be in custody of that -- of that court
11 now or on his way there.

12 A number of other defendants are named in the Nevada
13 proceedings. There are more than ten of them, which -- if you
14 would like me to read them, I can.

15 THE COURT: The ones who are common, between Nevada
16 and our case, please.

17 MS. HAY: Yes, your Honor. Ammon Bundy, Joseph
18 O'Shaughnessy, Ryan Payne, Ryan Bundy, Ryan Cavalier, Peter
19 Santilli, Blaine Cooper, and I believe that's the -- that's the
20 list, your Honor.

21 THE COURT: All right. And Mr. Santilli's release
22 status continues to be an issue of review, and the Nevada
23 case's implication as to it is what it is.

24 Mr. O'Shaughnessy's status was released from here,
25 but you say he's been arrested on that? Or taken into custody?

1 MS. HAY: Your Honor, that's a report from the media,
2 so I --

3 THE COURT: Well, look, perhaps Ms. Baggio can tell
4 us.

5 MS. BAGGIO: Thank you, your Honor.

6 My client was arrested on Friday, when he went in to
7 check in with Pretrial Services in Phoenix.

8 He made an initial Rule 5 appearance on the Nevada
9 warrant.

10 Mr. O'Shaughnessy had a detention hearing yesterday
11 before a magistrate judge in Phoenix, and the Government argued
12 for detention. The defendant requested release and was
13 supported by Pretrial Services in his request for release.

14 My understanding is that at the conclusion of that
15 hearing yesterday the magistrate judge took the issue under
16 advisement, and we're waiting to hear whether he'll be released
17 on that case.

18 It does obviously complicate things exponentially for
19 me, and it was on my agenda as something else I would like to
20 bring up with the Court today.

21 THE COURT: Thank you for that.

22 So in the context, then, of this issue of complexity,
23 we have -- nine of the defendants in this matter are named in
24 the Nevada case. Two of those -- Mr. O'Shaughnessy is, as
25 noted, presently in Nevada. Mr. Santilli has a release issue

1 that's complicated by the Nevada proceeding.

2 But the remaining defendants who are common to this
3 matter are all in custody here. Is that right?

4 MS. HAY: Your Honor, Mr. Travis Cox, I believe, has
5 not been taken into custody. And my understanding --

6 THE COURT: Right. He is not present yet, so we're
7 just not concerned with him at the moment.

8 I'm sorry. Ms. Baggio was still standing, so was
9 there something else?

10 MS. BAGGIO: I just wanted to correct something, your
11 Honor. Mr. O'Shaughnessy is in custody in Arizona.

12 THE COURT: Yes. Oh, I apologize.

13 MS. BAGGIO: The Court said Nevada.

14 THE COURT: Not in Nevada. In Arizona for the Nevada
15 hold.

16 MS. BAGGIO: That's correct.

17 THE COURT: All right. Back to the point, though,
18 with respect to how the commonality may affect complexity.
19 Mr. Ammon Bundy is in custody. Mr. Ryan Bundy is in custody.
20 Mr. Ryan Payne is in custody. Mr. Brian Cavalier is in
21 custody. Mr. Santilli's status is as noted. I've lost my
22 list. Just a moment.

23 Mr. Cooper is in custody. Is that right? Yes.

24 MS. HAY: Yes, your Honor.

25 THE COURT: So the complexity issue is obviously

1 something to take into account -- to analyze it, one has to
2 analyze this issue about Nevada.

3 But, on the other hand, the case was filed here first
4 and, by rights, should proceed as a priority over Nevada. And
5 it may be necessary for this Court to confer with the presiding
6 judge in Nevada at an appropriate time about that priority.

7 Does anyone know to whom the Nevada proceedings have
8 been assigned? Is there an Article III judge assigned yet? Do
9 we know that yet?

10 MR. KNIGHT: There is. I believe it's the chief
11 judge in the district, and I can't recall that individual's
12 name.

13 THE COURT: All right.

14 MS. HAY: Your Honor, on the matter of coordinating
15 with the Nevada case, I am aware that they filed writs of
16 habeas corpus ad prosequendum to bring some of these defendants
17 to Nevada. I understand that because this case was filed
18 first, because the defendants were arrested here first, our
19 clients should be tried here to completion before they were
20 taken out of the district.

21 And, in fact, this district has a consent decree
22 between the United States marshals and the indigent defendants
23 through the Federal Defender's Office that requires the
24 marshals to house defendants in the custody of the marshals
25 relating to these federal proceeding -- to any federal

1 proceedings within 85 miles of the courthouse, to facilitate
2 attorney-client conferences and communications.

3 So both based on the defense decree that exists in
4 this district and based on our clients' rights to due process
5 and a speedy trial, we would ask that the Court issue an order
6 that before the marshals moved anybody currently a defendant in
7 custody in this case to a different district that there be an
8 opportunity for a court hearing to review any -- any questions
9 about that.

10 I'm assuming that they will stay here, but just on
11 the safe side, if the Court could issue an order that they not
12 move without an opportunity for a court hearing in this
13 district, we would be alerted if an effort was made to move
14 them.

15 THE COURT: Is there any pending plan, Mr. Knight,
16 that you know of to move any of those who are in custody here
17 in this case to Nevada?

18 Do you know of any pending plan?

19 MR. KNIGHT: No, no pending plan.

20 THE COURT: Do you have a response to Ms. Hay's
21 concern about the need for this Court to issue an order to keep
22 local the defendants who might be needed in Nevada to address
23 the charges there?

24 MR. KNIGHT: We don't -- I guess the Government's
25 position is we don't want to disrupt the process normally

1 undertaken by the marshals of the court. So to the extent the
2 Court believes an order is necessary, the Government is fine
3 with it. We don't want to create an additional problem, I
4 guess, is our position. However they want to handle it.

5 THE COURT: I think it will be helpful on this issue
6 of the Nevada case for me to contact the presiding judge there
7 simply to determine whether any orders have been entered that
8 may impact the progress of this case. And then I can inform
9 you what -- if anything -- is learned.

10 But back to the complexity issue, which is my concern
11 at the moment.

12 Were there other points, Ms. Hay, you wanted to
13 address in opposition to a complex case designation?

14 MS. HAY: Yes, your Honor. Other than the number of
15 defendants, the Government cited to the unique nature of the
16 protest site and the time required for evidence processing.

17 Again, no evidence submitted in support of that
18 argument. They referred to the 172,000 acres of land at issue.
19 But from our viewing and tour of the -- the site, it's in fact
20 a walkable space. Not 172,000 acres were involved in this
21 protest. So that -- that argument as well from the Government,
22 that that makes the case complex, should be disregarded.

23 In addition, we now know that the Government has
24 finished processing evidence at the scene. In fact, they
25 turned it over to the Fish & Wildlife authorities before

1 defense counsel were able to view the scene untouched, as we
2 had hoped to do.

3 Last, your Honor, they referred to the nature of
4 damage to art and artifacts, but it appears that only Count 6
5 is related to that issue and only two defendants -- one
6 unknown -- are involved in that count. So, again, that's not
7 an argument that should delay the speedy trial rights of the
8 remaining defendants.

9 And, finally, the Government refers to the
10 overlapping involvement of other districts, including Nevada.
11 And they note that some of the defendants have relevant law
12 enforcement contacts in other districts. We would ask the
13 Court to address that concern by perhaps setting a date by
14 which the Government should contact those other districts and
15 obtain all of the defendants' statements that would be
16 relevant. Clearly that's a concern, but one that could be
17 addressed by a court order managing discovery through the
18 discovery process.

19 So for all of those reasons, your Honor, the state --
20 the reasons given by the Government to declare this case
21 complex are not compelling. These defendants have a speedy
22 trial right under both the statute and the Constitution, and
23 they would ask the Court to honor that speedy trial right and
24 set this case as soon as possible for trial.

25 THE COURT: Mr. Kohlmetz, since you filed something

1 on behalf of your client that mirrors these arguments, I just
2 wanted to see if there was anything else you wanted to add.

3 MR. KOHLMETZ: No, your Honor. Ms. Hay covered it.

4 THE COURT: Does any other defense counsel want to
5 make any other point on the complexity issue? Because
6 Ms. Hay's arguments are being considered on behalf of all
7 defendants.

8 All right. Mr. Knight?

9 MR. KNIGHT: Briefly, your Honor. With respect to
10 the scene itself, while the scene has been reopened, the
11 evidence is still being processed. That is the point, of
12 course.

13 And beyond that, I think Ms. Hay's points really
14 underscore the need for a complex case designation today, your
15 Honor. The number of defendants is a statutory factor. Their
16 presence here today in this fashion and the manner in which
17 we're proceeding in and of itself, I think, speaks to the
18 complexity issues in the statute.

19 And I will say only with respect to the artifact
20 issue and statute, that analysis and investigation is ongoing;
21 as is the processing of much of the discovery. And it's our
22 obligation and desire to get that done as quickly as possible,
23 but it does speak to the underlying complexity. Nothing
24 additional, your Honor.

25 THE COURT: Mr. Knight, I appreciate the Government's

1 taking to heart the Court's request at the last hearing to
2 proceed promptly with a Superseding Indictment and to have
3 included in this the charges that were additional to the
4 original conspiracy charge.

5 Does the Government, at this time, anticipate
6 additional charges beyond what was in the Superseding
7 Indictment returned yesterday?

8 MR. KNIGHT: Your Honor, quite honestly -- and we
9 stated this in the joint status report -- it depends entirely
10 on the continuing forensic analysis of some material and the
11 analysis related to the artifacts at the refuge. And so I
12 think it is a possibility certainly there would be one. But we
13 are waiting for information, as investigators pore through it,
14 to determine if it is indeed appropriate to return to the grand
15 jury. So I will represent to this Court it is a distinct
16 possibility. We don't know with certainty.

17 THE COURT: Ms. Hay, you mentioned motions to sever.

18 At the last hearing, I understood the defendants'
19 collective position was there was a desire to proceed to trial
20 collectively.

21 Is there some divergence there that I need to know
22 about?

23 MS. HAY: Your Honor, I can't speak for all of the
24 defendants, but my concern and the reason to raise the motion
25 to sever is that a number of the defendants, as you saw in our

1 joint status report, Docket 244, had indicated what they
2 thought was a potential trial schedule. And they broke
3 themselves into group B. Other defendants felt,
4 understandably, that given the lack of information they
5 couldn't commit to any kind of trial date at all.

6 So one -- one option would be for defendants who want
7 to pursue that trial date to file a motion to sever from any
8 defendant who's not prepared to go to trial at that date.
9 That's certainly something I think the defendants would want to
10 consider, and I don't think there's any joint position on that
11 at this point.

12 In addition, your Honor, given that one defendant is
13 apparently not -- hasn't been located, Mr. Cox. And another
14 defendant has been named here that none of us were aware of,
15 whose name is redacted. And then that -- and then, finally,
16 given that Mr. O'Shaughnessy's ability to participate in a
17 trial is at least in question, there's maybe a reason that the
18 defendants would want to file a motion to sever in order to
19 prevent those co-defendants from interfering with their speedy
20 trial rights.

21 Again, that's something I think all of the defendants
22 will discuss, and unlikely to get a unified position. But I
23 could certainly anticipate that some defendants would choose to
24 try to -- try to pick a date certain and ask to be severed from
25 any defendant who's not prepared to meet that trial date.

1 THE COURT: All right. Give me a few moments,
2 please.

3 (Pause, referring.)

4 THE COURT: The defendants' rights to a speedy trial
5 are first provided in the Constitution and then amplified in
6 the Speedy Trial Act, which provides that the Court, in certain
7 cases that meet a criterion of complexity, may suspend the
8 speedy trial clock, statutorily setting 70 days from Indictment
9 as the time within which a person must be brought to trial.

10 The standards for complexity are, as have been
11 referenced here on the record, several: The nature of the
12 prosecution, the number of co-defendants, the volume of
13 discovery, the time that would be necessary for the parties to
14 prepare for trial. I view also, in the context of complexity
15 here, the issues that have been referenced by Ms. Hay; the
16 pendency of other charges in another district against many of
17 these defendants, most of whom are in custody, as an issue.
18 But it certainly should not weigh against defendants who are
19 asserting a speedy trial right.

20 I think any person looking at this room would have to
21 concede the case is complex by its sheer volume of persons
22 accused, the nature of the charges of -- the primary charge of
23 conspiracy involving every one of the 25 named defendants,
24 Mr. Cox included, and the one person who has not yet been
25 publicly named; so 26 defendants.

1 The potential that was asserted at the last hearing
2 that all parties, including the Government, sought for the
3 Court to set the matter for a single trial. The complexity of
4 even managing the trial process with this number of individual
5 rights at issue. The scope of calling a jury. Trying to
6 identify a jury pool who reasonably can be expected to serve
7 for weeks at trial, who can be fair and impartial
8 notwithstanding the widespread publicity of the case. Just the
9 process of getting a jury summoned is exceedingly complicated
10 in this matter and could not be prepared in -- and pleaded in
11 the time that remains between now and the current April trial
12 date. That's just one small example.

13 Of course, picking a jury is something we could not
14 do until the defendants have filed the motions they're already
15 telling me they want to file; potentially three rounds of
16 pretrial motions. Each of which requires briefing, response,
17 and argument. Each of which requires consideration, so that
18 the issues that will be tried, assuming the case proceeds to
19 trial, are narrowed and appropriate.

20 There isn't any way the case could proceed to trial
21 on the current trial date given the number of defendants, the
22 nature of the charges, the discovery which has only begun.
23 And, as I understand it, there were some -- there were 25 CD
24 discs distributed by the Government to the 25 -- or 24? 24, 25
25 to counsel.

1 Let me just ask, did all of the defendants in the
2 room receive that one CD disc?

3 MR. ARNOLD: (Nods head.)

4 THE COURT: And as I also understand from the last
5 hearing, that was simply to represent --

6 MS. CASEY: (Nods head.)

7 THE COURT: -- the existing law enforcement reports,
8 the FBI reports.

9 Is that a fair understanding?

10 Mr. Barrow?

11 MR. BARROW: Your Honor, there have been two volumes
12 of discovery that have been released so far. They total 3500
13 pages. They primarily involve law enforcement reports and the
14 legal pleadings we obtained: Search warrants, pen registers,
15 that sort of information.

16 The total number of pages is 3500 pages. And as of
17 today, every defendant has received both volumes.

18 THE COURT: How many search warrants were executed in
19 this case?

20 MR. BARROW: Your Honor, I don't have that in front
21 of me.

22 THE COURT: About?

23 MR. BARROW: There are dozens.

24 THE COURT: Dozens. So dozens of affidavits in
25 support thereof. Dozens of origin documents that defense

1 counsel will need to consider in deciding how to approach
2 defense of motions and preparing for trial.

3 Yes? Something --

4 MR. BARROW: That's correct, your Honor.

5 THE COURT: I go back to the point I made at the
6 beginning.

7 Looking at this room alone and thinking of the
8 seriousness of the charges each defendant is facing, the
9 complexity of discovery, I do not need to know this precise
10 volume of every discovery production the Government will make.
11 I already know, from the representations made at the last
12 hearing, there were more than 500 F.B.I. reports initiated, and
13 each of those generates information that needs to be considered
14 fairly.

15 And I know defense counsel are asserting earnestly
16 the rights of their clients. But they also have an obligation
17 to prepare effectively and efficiently and thoroughly for any
18 trial; and preceding trial, any motions. This is, by any
19 definition, a complex case.

20 And so I now make that designation under 18 United
21 States Code Section 3161(h)(6).

22 DEFENDANT PATRICK: The Constitution --

23 THE COURT: I'll be issuing a written order with
24 that -- formalizing that finding.

25 The question now is whether I can set a firm trial

1 date or whether I should defer the setting of that date to the
2 next status hearing at the beginning of April.

3 I would keep the April trial date in place until I
4 can make a new trial date finding. Then I would be finding
5 excludable delay to the new trial date. Or I can proceed now,
6 with the information the parties have given me, to the extent
7 it's been given or anyone else wants to add, to set a date.

8 I do need to note, there is pending in the court a
9 case with, I think, 20 -- 20-plus defendants, United States
10 versus Guillen, G U I L L E N. Judge Jones is presiding in
11 that matter.

12 And many of the very defense lawyers who are on this
13 case are in that case, and that case is set for trial on
14 November 26.

15 So the suggestion in the joint status report that we
16 start trial in October won't work. We'll have to start trial
17 sooner than October in order not to conflict with that trial
18 and in order to accomplish what I am committed to accomplish,
19 and that is a trial as soon as possible for this matter.

20 That decision is also complicated by the extent to
21 which any party wants to assert a motion to sever. The
22 scheduling of trial and the staging of trial in these matters
23 with so many parties is often handled in a situation where
24 defendants of like interest determine they want to go to trial
25 in a group and another group of defendants conclude they want

1 to go to trial in a group. The Government all the while
2 asserting it's entitled to have one trial with one jury, with
3 the burden of producing the evidence one time. And those are
4 arguments that I suspect will -- some of you will want to make,
5 and I need to address.

6 So what I would like to know right now is whether the
7 parties want to defer to the status hearing on -- in April, the
8 first Wednesday in April, the actual setting of a firm trial
9 date, knowing that it has to be sooner than October 10, as
10 proposed, and knowing that you would need some time to confer
11 among yourselves about whether you will or won't be seeking
12 severance. And here I'm speaking to defendants.

13 I'm -- I'm fine with that. We can did defer the
14 decision to that date. Otherwise, I'll make a decision now,
15 and the parties will have to live with it.

16 We are going to have a firm trial date and all of
17 us -- and I do mean everyone -- will have to adjust his and her
18 personal lives -- those are who are not the defendants -- to
19 ensure that once the trial begins, we're all there to see it
20 through.

21 Now, I'm guessing it's going to take a matter of a
22 week or more to pick a jury. I'm guessing we're going to have
23 to be subpoenaing jurors, sending out summonses months before
24 jury trial and a process. So we have to think through a jury
25 plan.

1 So I see the need to set the date, and I'm willing to
2 do it now. But if the parties believe we ought to give it more
3 thought -- particularly the defendants -- I'm also willing to
4 defer.

5 Mr. Arnold.

6 MR. ARNOLD: Your Honor, I have spoken to my client
7 about a group that would be fitting to go forward if we elected
8 to move to sever. I have spoken to at least one attorney about
9 it. I plan on doing that very shortly. I think that will
10 affect the scheduling.

11 We would request that we defer scheduling until a
12 later date.

13 THE COURT: Does anybody insist that I set a new
14 trial date to date -- today?

15 All right. What I'll do is at the April hearing I
16 will set a trial date.

17 Now, let me ask -- I think the earliest trial date
18 currently on the docket is April 5.

19 Does anybody have any contrary information to that?
20 (Pause.)

21 Can someone tell me -- since I don't have my actual
22 desk set up in this courtroom, can someone tell me what the
23 first Wednesday in April is?

24 MR. KNIGHT: That's the 6th, your Honor.

25 THE COURT: The 6th of April?

1 MR. KNIGHT: Yes.

2 THE COURT: Why don't I do this. I'm going to find
3 excludable delay for the reasons just indicated, through at
4 least April 6th, so that to the extent there is an earlier
5 trial date, the Act is honored. And then at the April 6
6 hearing, with the submissions you make in advance thereof, I'll
7 be in a position to set a firm trial date.

8 When you think about trial -- and I will want a joint
9 submission from everyone on that. When you think about a trial
10 setting, I want to know your projections as to how long you
11 expect trial will take.

12 I know that's a hypothetical projection, based on
13 what you -- what little you know or don't know now.

14 I expect, under anybody's view, it will be a
15 weeks-long trial. Potentially more than four weeks and into a
16 second month. That means a lot to selecting a jury and the
17 willingness of people to serve for extended periods of time.
18 So the more reliable the information is about what we're
19 planning for trial, the sooner we can begin in the process of
20 planning ahead for a jury.

21 So with respect to, then, the April 6th status
22 conference, in preparation therefor, the parties must submit a
23 single filing. I understand you will have differing positions.
24 But I want it captured in one filing, the positions of the
25 parties as to a firm trial date.

1 And to the extent there are proposals that the Court
2 consider severance, then I'm happy to hear about those either
3 by way of a joint proposal in the filing or -- or otherwise.

4 Given that there are 26 named defendants, one of whom
5 hasn't been publicly identified, I want to reiterate the
6 importance that motion filing follow the directive I made at
7 the last hearing. Unless it's an emergency, no motion should
8 be filed without an affirmation of conferral with opposing
9 counsel.

10 With respect to defendants filing motions, the moving
11 party, after conferral of course, has to have conferred with
12 the other defendants, too. The first paragraph of the motion
13 should recite the conferral has occurred and recite if any
14 defending party has asserted he or she does not join the
15 motion.

16 So the presumption is everyone joins all motions
17 unless, in the moving papers, the moving party identifies who
18 has not joined; or within three days of the filing thereof, a
19 party wishes not to be considered as part of that motion.

20 So, again, with respect to the joint filing on trial
21 date, I require it to be that; a single filing. That means you
22 have to work together. And I'll leave it to you to figure out
23 who's going to assist in facilitating that process.

24 I want to commend you thus far for the way you're
25 trying to share work. And we're all learning this as we go.

1 So I will -- won't make assignments on the defense side or the
2 Government's side as to who's going to do it. But you will do
3 it, and then I'll address that actual trial date setting at the
4 next hearing.

5 Yes, Ms. Hay.

6 MS. HAY: Your Honor, just a housekeeping matter for
7 all of us.

8 The -- the ECF system allows a defendant to check
9 whether they're filing a motion just for themselves or for all
10 of the defendants in a case -- or all of the parties in a case.

11 And, earlier, Ms. Boyer had given us instruction to
12 be sure we don't accidentally file for everybody and we only
13 file it for our own defendant.

14 But I'm wondering if the Court would allow us in
15 cases where -- for example, the objection to the protective
16 order that was filed yesterday by Mr. Kohlmetz, if that is a
17 document that could be filed on behalf of all defendants. And
18 the reason for that is that when we are individually printing
19 the docket for our defendant, we do want the -- the motions
20 that -- our joint motions to be reflected on our docket;
21 otherwise, we would have to print the whole thing. So I just
22 wanted to clarify, because there was some confusion on how we
23 should do this.

24 Can we --

25 THE COURT: You may work with court staff for

1 whatever convenience works for you. But for purposes of the
2 fundamental issue here, the ruling is any motion filed must
3 have in the first paragraph a certification of actual conferral
4 with opposing counsel and a statement of the extent to which
5 the moving party knows who does not want to join the motion.

6 Within three days of the filing of the motion, if
7 anyone wants not to be deemed to have filed -- joined the
8 motion, that filing comes in. Otherwise, the presumption is a
9 motion made with conferral with the opposing party is a motion
10 on behalf of all, and everyone gets the benefit of the ruling
11 and the reservation of the rights. So I've said that a number
12 of times here on the record. It's in the original case
13 management order. And I believe the defendants' rights are
14 preserved that way.

15 With respect to the mechanics of how CM/ECF works,
16 you all have leave to work out with the court staff what is
17 most effective.

18 MS. HAY: Thank you.

19 THE COURT: But it's all going to be interpreted the
20 way I just indicated.

21 All right.

22 MR. PAGAN: Your Honor? I have one question that
23 somewhat relates to that.

24 THE COURT: Yes, Mr. Pagan.

25 MR. PAGAN: Since we have a Superseding Indictment,

1 one of the questions that we have is, is the Government
2 dismissing the other --

3 THE COURT: It's on my list. But thank you,
4 Mr. Pagan. I might as well go there now.

5 I think the Government needs to file a motion to
6 dismiss the Cooper case before Judge Jones, now that all
7 defendants are in this matter.

8 And then counsel and the parties won't be burdened by
9 any electronic filing requirements from that other case. So
10 that will be closed because the interests of justice require it
11 in light of this Superseding Indictment.

12 MR. PAGAN: And one of the issues that we were
13 discussing last night, because -- because there were two
14 Indictments, oftentimes if there was somewhat of a joint
15 motion, we would have to ask someone to file someone -- the
16 same motion in another case.

17 So one issue is that if -- can the Court deem -- in a
18 sense, nunc pro tunc -- any motions or reservations of
19 rights --

20 THE COURT: Yes.

21 MR. PAGAN: -- that have been filed prior to these
22 new defendants being superseded --

23 THE COURT: Yes.

24 MR. PAGAN: -- as applying nunc pro tunc --

25 THE COURT: I will note in the order that issues from

1 today all motions filed in the Cooper matter, all reservations
2 of rights made in the Cooper matter are deemed made in this
3 matter, so that they don't need to be refiled or repeated.

4 MS. SHERTZ: Your Honor --

5 THE COURT: I don't want to -- I want to stay on
6 task, unless it relates to that point. And I was going to
7 address it. But I have an agenda we need to get through
8 substantively, first, before we cover up -- cover every
9 question.

10 Does it relate to this?

11 MS. SHERTZ: Yes.

12 THE COURT: Go ahead.

13 MS. SHERTZ: I don't know whether you want to
14 reappoint the Cooper lawyers, now that we have a different case
15 number and a different --

16 THE COURT: It's on my list.

17 MS. SHERTZ: Thank you.

18 THE COURT: You're all appointed. You're all
19 reappointed.

20 MS. SHERTZ: Thank you.

21 THE COURT: The clerk will take care of that
22 transfer.

23 It's not really a reappointment. The appointments
24 from the Cooper matter are carried to this matter. I want
25 to -- so with respect to Docket No. 185, I am granting the

1 motion. I am designating the case complex. I am deferring the
2 setting of a firm trial date to the April 6 status hearing.
3 And the parties will file a joint submission with their
4 requests and recommendations as to the date of that trial and
5 as to whether the trial should be a joint trial on all charges,
6 with all defendants, or in some staging and grouping of
7 defendants. In which case the parties must also recommend an
8 order of trial because, obviously, I cannot preside over more
9 than one trial at one time and I cannot expect the Government
10 to divide up into different courtrooms to try two or three
11 cases at one time.

12 So if there are severances, they will -- they will be
13 accomplished in a series. And I will have to determine which
14 group goes first, based on all of the rules that apply, and
15 then go from there. So I want your input about that in that
16 joint statement.

17 Now, I want to turn to the discovery management
18 issues. And, here, we need to address the Government's motion
19 for protective order which was filed Monday. We need to
20 address the parties' stipulated order regarding discovery 238
21 and a joint proposal that came through in the joint status
22 report.

23 I want to emphasize, again, consistent with the
24 direction I just made, the Government's motion for a protective
25 order should have included -- and in the future will include --

1 a certification of conferral. And -- because I need to know
2 that in every single filed motion.

3 The -- such a submission ideally would be a joint
4 submission. A submission on a discovery dispute: Here's the
5 issue, here's the Government's position, here are the
6 defendant's positions, either collectively or individually.
7 Ideally -- I know we're not in an ideal place yet, but we can
8 keep working on it until we get to that place. And the reason
9 I'm going to continue to insist on that is the more that model
10 is followed, the sooner the rulings can be made, the sooner the
11 matter can get to trial, the sooner the speedy trial rights of
12 the defendants are honored. So that is just a reminder of a
13 way in which that issue needs to arise.

14 I have read the Government's motion for discovery.
15 I've read, Mr. Kohlmetz, your response. I know that these
16 issues are of concern to both sides.

17 So what I would first like to have discussion about
18 is the showing the Government made as to whether a protective
19 order is warranted at all. The defendants' argument is that it
20 is not.

21 So I would appreciate the Government's summary of its
22 position as to why any protective order is warranted. I assume
23 the Government's had an opportunity at least to read
24 Mr. Kohlmetz's filing as of last night.

25 And then I would like the defendants' position on

1 whether a protective order is warranted at all. And then we'll
2 get to the scope issues.

3 Who's addressing that?

4 Mr. Barrow.

5 MR. BARROW: Thank you, your Honor.

6 And forgive me, my voice may leave me at some point
7 here.

8 Agent -- we have submitted, in conjunction with the
9 motion for a protective order, an affidavit from Special Agent
10 Katherine Armstrong. That affidavit lays out specific examples
11 in which individuals including the defendants, but also
12 including others, have contacted those that are adverse or
13 believed to be adverse to their position and either threatened
14 or intimidated them.

15 Mr. Kohlmetz, in his response, objects to that
16 showing. Short of showing that defendants in this matter have
17 used the discovery materials to approach the Government's
18 witnesses to threaten or intimate them, I don't know what more
19 we could show. In other words, these are very specific
20 showing -- it's a very specific showing involving very
21 particular events that demonstrate the risk that is posed if
22 the discovery was not subject to a protective order.

23 Of course, the Court is aware that protective orders
24 are quite common in our district, and they're frequently
25 granted among many of the attorneys that are in this room.

1 This particular protective order is fairly -- is meant to be
2 very -- the least restrictive as possible. And the spirit of
3 the protective order is that we would work with the defendants
4 to deal with any issues that arise, and I'm confident we could
5 do so.

6 As for at least the showing in Agent Armstrong's
7 affidavit, I believe it is -- it's made, and it's well
8 supported.

9 THE COURT: All right. Mr. Kohlmetz.

10 MR. KOHLMETZ: Your Honor, I -- I disagree.

11 I don't think the affidavit establishes, even close,
12 a particular need as the case law supports for such a blanket
13 order on the dissemination of the discovery here.

14 When I reply -- when I responded last night to the
15 Government's motion -- which was not filed Monday, it was filed
16 yesterday as well --

17 THE COURT: I'm sorry.

18 MR. KOHLMETZ: That's okay.

19 THE COURT: I misspoke.

20 MR. KOHLMETZ: I was short of time.

21 In the interim, I've been made aware by two attorneys
22 here, who wish to address the Court, that they -- by way, I
23 believe, of a proffer -- have information that would counter at
24 least some of the averments in the affidavit.

25 I filed my motion going on the assumption that the

1 affidavit stated what it stated. And, even so, I don't believe
2 it supports anything more than perhaps some particularized
3 protective orders that would apply directly to the instances
4 that the Government refers to.

5 I'm not conceding that point because, quite frankly,
6 I don't have enough information from the affidavit to
7 determine, one, whether any actual threats were made other than
8 that individuals apparently may have felt threatened. And I
9 think that's important because I think in terms of whether a
10 threat is made, the Court should look to was an actual threat
11 made? What was the intent of any threat or the intent of any
12 intimidation? Were those specifically tied to any of the
13 defendants here, as opposed to a mass of people who were out at
14 that scene? Okay? There were, at points, hundreds of people
15 in the Burns community and -- going to and from the refuge.
16 There are some tenuous links, at best, to some of the people in
17 this room.

18 I think the Government needs to make a particularized
19 showing as to particular statements and particular individuals
20 when it is seeking a protective order that covers, at this
21 point -- I have been told -- over 95,000 potential pages of the
22 discovery. So I don't think we get there with the current
23 blanket order.

24 What is disturbing to us is that the blanket order
25 seeks to -- the motion seeks a blanket order preventing us from

1 disseminating discovery materials, yet the Government has been
2 selectively disseminating discovery materials throughout the
3 course of this investigation.

4 I woke up this morning to the front page of our
5 paper, *The Oregonian*, to read that there is now a conduct
6 inquiry. The F.B.I. agents are actually facing a potential
7 criminal investigation involving potential lies and coverups
8 involving the shooting of LaVoy Finicum. I can't think of a
9 case in this district that calls for more open dissemination of
10 this information to the public.

11 Why should the Government be allowed to pick and
12 choose what discovery materials are given to the media? And,
13 on the same hand, prevent the defense from disseminating these
14 materials as we see fit?

15 Beyond that, your Honor, the language of the proposed
16 motion and order is so vague, I -- I bring that up -- and I
17 don't want to reiterate a point. But I've been approached --
18 and I'm sure many of the defense attorneys in this room have
19 been approached by any number of individuals who have offered
20 their assistance in an investigatory capacity. I -- I don't
21 know who I would be able to provide any discovery to under
22 that.

23 This is a nontraditional criminal case involving
24 freedom of speech, freedom of assembly. I think there is a
25 compelling public interest in not just select disclosure but

1 full disclosure.

2 The gallery here is full and has been at every
3 conference. There have been literally hundreds of media
4 articles, not including what we have seen on -- on social
5 media, that have -- have been and are being written about this
6 case. So I am absolutely fine with -- and I did confer
7 directly with Mr. Gabriel, and I'm happy to do so again. But I
8 think that if the Government wants protective orders, it should
9 selectively approach the Court.

10 I'm fine, until Mr. Gabriel and I -- or someone else
11 works -- continuing for the next week or so under the
12 stipulated order now until we can hash this out. But I just
13 think a blanket order is inappropriate, your Honor.

14 The rest of the reasons I've cited in my memo.

15 I do know that Mr. Arnold's team and Ms. Wood, for
16 Mr. Ritzheimer, will want to address some of the averments that
17 they had a chance to review in the affidavit. But those are my
18 points, your Honor.

19 THE COURT: All right. Mr. Arnold.

20 MR. ARNOLD: Thank you, your Honor.

21 First, regarding some of the general statements about
22 what happened in *The Oregonian* front page. I want to refer the
23 Court to Docket No. 177, which was the second response to the
24 site inspection request. Recall that, in court, we asked for a
25 representative of the defense to be present during F.B.I.

1 processing of information.

2 On page 5 of that Government response -- this is a
3 quote:

4 Defendant Ammon Bundy complains that without his
5 requested order, he will, quote, be forced to
6 depend upon the goodwill and diligence of state
7 actors to do their job properly. As if --
8 And this is the end of the quote.

9 This -- the Government's saying, As if that is
10 anything but the normal and well-settled practice
11 in criminal matters.

12 And then we learn -- not through a production in
13 accordance to **U.S. versus Brady**. We learn from a news
14 conference, disseminated to the media, that this was not the
15 normal and well-settled practice. Of course, the prior case in
16 this own district, as cited by counsel in our response to the
17 protective order, shows that that is not the well-settled
18 practice in this district.

19 We have essentially, as brought out, some allegations
20 of F.B.I. misconduct. And I just refer the Court to, I think,
21 the **People verses OJ Simpson**, which is on the news right now.
22 That is that TV show. And one of prosecutors in there says,
23 Why does this sort of thing -- referring to just the craziness
24 of -- of acquittals and things that happen in these
25 high-profile cases -- why does it always happen in these cases,

1 these strange things happen?

2 Well, the reason is because of public accountability.
3 Because the media --

4 AUDIENCE MEMBER: Yes.

5 MR. ARNOLD: -- is present to overlook the
6 Government. The fourth estate is there to protect not only our
7 clients but the citizenry in general.

8 So I will refer the Court to the affidavit in support
9 of the protective order. In essence, that's document No. 246,
10 page 4. This is an affidavit by Ms. Armstrong. That is sub B.

11 She refers to a Harney County law enforcement
12 official who received an e-mail and referred to some
13 allegations of -- of a threat. And then -- then jumped ahead,
14 from December 16th to January 1st.

15 Well, what is left out -- and by way of proffer --
16 and, in fact, your Honor, I'm in a position where I'm afraid to
17 make my argument because I think my argument needs to name that
18 Harney County official so we can understand the true
19 motivations for the protective order. So I would request
20 permission to discuss the parentry (phonetic), and how it
21 relates to that Harney County official. Or, if the Court deems
22 it appropriate, to hold a proceeding outside the presence of
23 the public to address this issue. But I believe it's in the
24 interest of my client to name that Harney County official and
25 read the portion of discovery that relates to it, that was left

1 out of the Government affidavit.

2 THE COURT: I need the Government's position on that
3 request, please.

4 MR. KNIGHT: Go ahead.

5 MR. BARROW: Your Honor, I don't know exactly what
6 Mr. Arnold is referring to.

7 THE COURT: Why don't you walk over to counsel table
8 and speak to him briefly.

9 This is another reason why conferral is required.

10 (Pause, Mr. Arnold and Mr. Barrow conferring.)

11 THE COURT: Mr. Barrow.

12 MR. BARROW: Your Honor, I'm not going to attempt to
13 restrict what Mr. Arnold argues. I don't know the point he's
14 trying to make, but there's nothing about the affidavit that we
15 intended to restrict what counsel could argue, so --

16 THE COURT: Well, it sounded like he was concerned
17 that naming the Harney County public official, around which
18 this evidence exists, would somehow run afoul of the interests
19 you were trying to protect.

20 You don't object to him naming that official?

21 MR. BARROW: I don't object naming who he thinks that
22 person is, no.

23 THE COURT: Go ahead, Counsel.

24 MR. ARNOLD: Thank you, your Honor.

25 And I'm just -- for the record, by way of proffer, I

1 have a discovery Bates stamp marked 927. It's an unclassified
2 Federal Bureau of Investigation report dated 12-17-2015.

3 It reads that:

4 Harney County Sheriff Dave Ward was interviewed
5 via telephone. After being advised of the
6 identity of the interviewing agent and the nature
7 of the interview, Ward provided the following
8 information: On December 11th, 2015, Ryan Pay --
9 or Ryan Payne and Corey Lequieu paid Ward a visit
10 at his office.

11 Am I saying --

12 (Pause, conferring.)

13 MR. ARNOLD: Yeah.

14 Payne and Lequieu told Ward by a complete accident
15 they had interaction with Ward's parents. During
16 the interaction, Payne and Lequieu said that
17 Ward's parents threatened them.

18 This is Sheriff Ward of Harney County.

19 After Payne and Lequieu left Ward's office, Ward
20 had a telephone conversation with his mother,
21 Linda Ward.

22 And my first point, to interrupt, is that this sort
23 of investigation by Sheriff Ward into a threat against his
24 parents is going to be perceived as a conflict of interest.
25 And I'll get back to that, because the reason the F.B.I. got

1 involved was over a dispute with his parents.

2 And I'll -- I'll get back to that in a moment.

3 Linda -- this is the mother of Sheriff Ward --
4 said that she and Ward's father, James Ward, were
5 assisting with the garage sale at the American
6 Legion. Linda said that three males and a female
7 were handing out flyers regarding Dwight and
8 Steven Hammond's resentencing.

9 One of those individuals made the remark that they
10 were going to force the sheriff to do his job.

11 This is handing out pamphlets, kind of like the
12 founders did.

13 Linda then identified herself as the sheriff's
14 mother and confronted the individuals.

15 So it's actually the -- the sheriff's mother
16 confronted the protesters exercising their free speech. And
17 she's entitled to do that because she's a citizen as well.

18 Linda told Ward that she had not threatened the
19 individual.

20 So the Sheriff Ward's mother told her son, who's
21 investigating the threat, that the mother didn't threaten our
22 clients over her son's assertions of not doing his job.

23 Linda did tell the individuals that if they attempt
24 to harm one hair on the sheriff's head, her and the community
25 would arm themselves and stand by the sheriff.

1 Our position there, your Honor, that sounds a lot
2 like the threats they're accusing our clients of making. If,
3 then, statements -- that if illegal activity happens, they get
4 to defend themselves.

5 (Pause conferring.)

6 MR. ARNOLD: And, your Honor, it continues.

7 That James -- this is James Ward, the father of
8 this -- of the good sheriff.

9 James called one of the individuals a son of a
10 bitch and remarked that a .45/70 would have put a
11 big hole in somebody.

12 Your Honor, for the record, a .45/70 is a -- is a .45
13 caliber load with a -- I think it's about 70 grain. It's sort
14 of an historic round. It's used shooting out of a long gun.

15 And, agreed, it would put a big hole in somebody.
16 We'll concede that that threat is accurate by Sheriff Ward's
17 father.

18 Linda said the individuals were openly carrying
19 firearms. Ward advised that the individuals
20 matched the description of Payne and Lequieu. And
21 Ward told Payne and Lequieu that he was receiving
22 threats via e-mail. And Payne attempted to
23 convince Ward that the threats were coming from
24 the federal government.

25 And just for the interest of fairness to the

1 Government:

2 Ward received an e-mail from, quote, Mcscrawface
3 that said, quote, Have a good read, you two-bit
4 lying punk.

5 I believe that's referenced in the -- in the
6 affidavit. By --

7 THE COURT: It is.

8 MR. ARNOLD: And, your Honor, that's the completion
9 of that -- of that report.

10 THE COURT: So your point is --

11 MR. ARNOLD: My --

12 THE COURT: -- that -- that the evidence cited by the
13 Government in support of the protective order -- there's more
14 to it. There's an evidentiary concern about the extent to
15 which that legitimately displays a threat the Court should be
16 concerned with protecting against?

17 MR. ARNOLD: That's one point, your Honor. The other
18 point is how that dovetails with counsel's remarks regarding
19 disseminating this information selectively to the public for
20 consumption. These are calculated -- essentially, a motion for
21 press release that is getting information out to the public.
22 And -- and -- and in support of -- ironically, in support of a
23 protective order to try to keep our clients from doing that.

24 The other important thing I want to raise to the
25 Court is that our clients, who have been protesting, exercising

1 their free-speech rights, they're going to want to talk about
2 discovery. The order, as written, talks about disseminating
3 copies.

4 What we worry about is even if they talk about
5 discovery and someone else talks about learning about
6 discovery, that that's going to lead to a contempt charge
7 against our clients.

8 So, in essence, this is a -- has a chilling effect on
9 our client's free speech, which is unconstitutional under the
10 First Amendment.

11 The chilling effect is, in essence, if we can't
12 disseminate information and we're afraid someone is going to
13 accuse us of disseminating copies, are they going to confuse
14 our statements, our free speech as possibly receiving a copy of
15 it instead.

16 And the other issue for -- counsel described is we've
17 had -- and we actually have teams of volunteers combing through
18 social media right now, and we -- we've got teams of volunteers
19 doing essentially paralegal work for free, and they're going to
20 need copies of that discovery.

21 And we are very concerned that -- how do we determine
22 who those individuals are and whether or not they -- they go
23 into this category? And, quite honestly, I haven't vetted them
24 outside of the fact that they're doing a really good job of
25 getting the information that I need.

1 So I -- I'm in a position where I don't have
2 relationships with these people, other than the Internet,
3 essentially. And by giving them copies of discovery to assist
4 me in assisting Mr. Bundy, are they going to release
5 information; have it come back for a contempt charge against me
6 or Mr. Bundy?

7 Now, I feel -- and just for the record, by way of
8 proffer, I feel chilled from utilizing volunteer paralegals now
9 because of this proposed order. And now I, for the record,
10 feel that compromises my ability to represent Mr. Bundy.

11 And the last thing, your Honor, to counter the
12 affidavit, this is another report. This one is from January
13 4th, 2016.

14 THE COURT: You've made your point on the evidentiary
15 quality.

16 I'm talking only now about standards. And in the
17 interests of time, I need to hear from the other counsel who
18 wanted to address the issue.

19 Yes, Ms. Wood.

20 MS. WOOD: Your Honor, I'll be brief, and it goes to
21 Court's inquiry about whether the Government has made adequate
22 showing in this case.

23 I actually have briefly conferred with Mr. Barrow on
24 this. It was in connection with a release matter, but not --
25 because I didn't see the protective order until yesterday.

1 But the first allegation deals with this
2 confrontation of a woman wearing a BLM T-shirt at Safeway on
3 December 18th.

4 I'm sure the Court has read that in the complaint as
5 well. The complaint identified Mr. Ritzheimer as being one of
6 the two men, although he wasn't alleged to have made any
7 threatening statements himself. The other individual was not
8 identified.

9 We have obtained bank Visa credit card records from
10 Mr. Ritzheimer and can establish by those records, as well as
11 at least one reputable witness that we've interviewed so far,
12 that he was in Peoria, Arizona, on -- I'm sorry, on December
13 18th of 2015.

14 He was still there early morning of the 19th. And he
15 proceeded to travel to Meridian, Idaho, and got there on the
16 evening of the 19th of December.

17 And so it's -- it's clear from the 302 report that we
18 just received in the first installment of discovery, the woman
19 identifies Mr. Ritzheimer and immediately identifies Blaine
20 Cooper.

21 Mr. Cooper, I would proffer to the Court, traveled
22 with my client, Mr. Ritzheimer, in Mr. Ritzheimer's truck;
23 which does not, in any shape or form, match the description
24 given by the witness. It's not the same color, not the same
25 make.

1 THE COURT: So is your point, Ms. Wood, that the
2 threat didn't happen or that it was wrongly associated with
3 your client?

4 MS. WOOD: Well, your Honor, I think both of those
5 possibilities are there for the Court's consideration.

6 You either have someone making a false complaint or
7 you have someone making a misidentification.

8 THE COURT: Okay. I understand your point.

9 MR. ARNOLD: And, your Honor, for the record --

10 THE COURT: Mr. Arnold, I'm not finished.

11 MR. ARNOLD: Oh, sorry, your Honor.

12 MS. WOOD: Your Honor, that was my point.

13 In terms of the showing made by the Government's
14 affidavit that there have been threats by these defendants to
15 warrant issuing a protective order --

16 THE COURT: Well, I think actually the showing isn't
17 necessarily limited to your clients. The issue, supported in
18 the Government's submission, is that the very nature of this
19 entire controversy has promoted -- as Ms. Arnold argued --
20 Mr. Arnold argued, threats that are occurring. Whether they're
21 coming from one camp or another, there have -- there have been
22 documented these kinds of disputes.

23 And the risk that I'm concerned with is the extent to
24 which, when the Government obliges its duty to produce
25 discovery, it may be putting at risk a person who shouldn't be

1 put at risk.

2 So that's the issue. Not so much that your client
3 did or didn't, on a particular day, make a threat. But the
4 risk issue is much broader than the Safeway incident. It's
5 inherent in the nature of the dispute in the first instance.

6 MS. WOOD: Your Honor, I would just say this very
7 briefly. Obviously, it was a heated situation during the time
8 of the occupation. There were some people in Burns who were
9 for it, some against it. There was a lot of words. There was
10 a lot of freedom of expression going on. There was not, to my
11 knowledge, any individual in that community physically injured
12 in any way or that's -- you know, that's made that type of
13 allegation. And so now the situation has defused. Groups are
14 geographically separated. And, you know, I just question the
15 need for a protective order to protect people now that that
16 heated situation is past.

17 THE COURT: Well, the heat has passed in that light,
18 and certainly -- certainly the fact that many of the accused
19 are in custody limits those interactions. But there remain
20 people in the community on both sides of the dispute.

21 So the real issue is whether there has been an actual
22 showing made of a risk of threat. The Government's protective
23 order seems limited to that concern. The -- there isn't any
24 effort here to deprive the defendants of personal direct
25 access, which is the more common protective order problem, when

1 there are -- when a defendant is prohibited from holding or
2 keeping a record. The Government is not seeking that here.
3 They're seeking a restriction on what the defendants may do
4 with that information that they rightfully receive.

5 And so I understand your point.

6 Mr. Arnold, what new did you want to add? Something
7 new?

8 MR. ARNOLD: Your Honor, I just -- counsel pointed
9 out there's two possibilities. I just, for the record, want --
10 regarding who the threat came from. I understand your Honor
11 doesn't find that as weighty, but I wanted to add the third
12 possibility that the threat -- or the perceived threat, the
13 person wasn't wrong. Maybe it was somebody posing to be a
14 protestor, was the third possibility that we don't know. And I
15 just want to put that on the record.

16 THE COURT: All right. Mr. Barrow.

17 MR. BARROW: Your Honor, in my initial comments, I
18 was really focused on the Government's showing. I would like
19 to just address a few of the points that Mr. Kohlmetz has
20 raised.

21 THE COURT: We've certainly gone beyond the standard.
22 Yes, go ahead.

23 MR. BARROW: The Government really is not picking and
24 choosing what to release in this case. There were two videos
25 that were released. Obviously, one of those was related to a

1 separate investigation. It was not released by -- by this
2 office.

3 And if there is a particular piece of information in
4 the discovery that the parties feel is important to release,
5 the protective order contemplates us meeting and conferring and
6 discussing that. That's never been a problem in past cases.
7 It's never been an issue that we haven't been able to work out.

8 And, of course, if there was something, like a
9 particularly sensitive witness statement that the parties
10 wanted to release, that we felt couldn't be in the public
11 realm, then the Court could get involved.

12 THE COURT: But why shouldn't the burden initially be
13 on the Government to identify that which the Government is
14 concerned should be protected, as opposed to putting the burden
15 on 25 or 26 lawyers selectively to seek permission to work with
16 one piece of discovery or another?

17 MR. BARROW: Well, we think that this is perhaps the
18 most efficient way. We have -- consistent with the Court's
19 order, we've been pushing as hard as --

20 THE COURT: Excuse me, please. Counsel's speaking
21 and I need to hear.

22 MR. BARROW: We've been pushing as quickly as
23 possible to produce as much as possible.

24 As this Court's well aware, the Government has a
25 statutory right to hang on to things. Now, we could take that

1 approach. We could hold on to witness statements and say that
2 we're not going to produce them at this stage. But that's
3 inconsistent with everything we've been talking about today.
4 That's inconsistent with the idea of trying to get all of the
5 information to the defendants as quickly as possible so that
6 they can prepare for trial.

7 So I don't -- again, I don't think there will be a
8 problem if people approach this in terms of what they truly
9 need to release. I don't think it will be an issue.

10 This case is very unusual in one respect. Not only
11 is there a lot of press interest but it seems to me that --
12 well, let me tell you what happened -- happened in this
13 particular case that I've never ever seen. We had a procedure
14 for defendants' attorneys to pick up their discovery disks last
15 Friday.

16 Before some of these attorneys came to pick up their
17 disks, a member of the media came to see when they could pick
18 up their disk.

19 The notion that our discovery would be delivered to
20 the media is completely foreign. I've not seen any case in
21 this district or heard of any case in any district that the
22 discovery was disseminated to the media.

23 And I think the reasons for that are that discovery
24 is something that we both compile during the course of the
25 investigation, often with court authorization for things like

1 search warrants; that we're investigating a crime. And we
2 collect it for that purpose. And then we deliver it to the
3 defendants as discovery.

4 And all of the rules of criminal discovery talk about
5 delivering to the defendant, not disseminating to the public.
6 Rule 16 talks about disclosing discovery to the defendant.

7 **Jencks** talks about the same concept, as does **Brady**.

8 This trial will be a very public and open trial. All
9 of the witnesses will testify on the stand and all of the
10 evidence will be presented and the media will be -- be free to
11 report on it.

12 But if the discovery itself is immediately in the
13 public realm, I think it's very likely to interfere with the
14 rights of a fair trial, and it certainly will have a chilling
15 effect on what the Government is prepared to produce at a
16 particular time.

17 Again, we believe that through the meet-and-confer
18 process we can work through any legitimate issues and resolve
19 it that way.

20 One -- Mr. Gabriel reminded me, a lot of the material
21 in this particular case is open source information; the social
22 media stuff we've been talking about. This protective order
23 doesn't restrict the dissemination of that information.

24 THE COURT: But, Mr. Barrow, that, I guess,
25 underscores my initial question to you.

1 If the Government has a concern that a particular
2 witness is at risk, why shouldn't the process be that the --
3 the Government confers and seeks a protective order as to
4 particularized discovery; as opposed to the discovery as a
5 whole? Why shouldn't that be the Government's burden in the
6 first instance, as opposed to putting that burden on any
7 defendant?

8 MR. BARROW: Your Honor, we have approached it this
9 way because I think it was the fastest way for us to get to
10 where we are.

11 Discovery currently, in the two volumes we have,
12 consists of all of those legal pleadings which are currently
13 sealed by court order that allowed us to produce them in
14 discovery but doesn't allow for their public dissemination.

15 THE COURT: Well, a protective order that says thou
16 shalt not disclose that which is sealed is a different concern
17 than what counsel are arguing here.

18 Isn't that right?

19 MR. KOHLMETZ: It is, your Honor.

20 THE COURT: All right.

21 MR. BARROW: And then the second half of the
22 discovery involves these reports. The bulk of those reports do
23 involve interviews with individuals. There are some that are
24 not -- that don't raise those concerns.

25 I -- again, I'm happy to work with attorneys on that.

1 I wouldn't have had time to do that and produce the discovery
2 on -- in the manner that we have.

3 THE COURT: All right. I understand everyone's
4 position here.

5 I'm satisfied that the Government has made a showing
6 that there is a potential for a risk. What I'm not satisfied
7 is that the scope of the proposed protective order is
8 sufficient.

9 And so, for now -- but only in an interim basis --
10 I'm going to grant the Government's existing form of order but
11 with the explicit direction that it will be revised and made
12 more limited and targeted and less restrictive.

13 The process to do that is more conferral between the
14 Government and those among defense counsel who designate
15 themselves as the ones with whom Mr. Barrow will confer. And
16 then I want a joint statement regarding the parties' positions
17 on the scope of the protective order filed, and I want it filed
18 in two weeks from today so that this doesn't interfere with the
19 collateral issues around the production of discovery.

20 So there will be a protective order. Clearly no
21 defendant and no defense lawyer may share material that is
22 subject to seal. That the order -- that the Court has already
23 ordered that.

24 And I understand the discussion here this morning is
25 not targeted there but to just the production of general

1 discovery.

2 So what we have here is a balance of risks, a balance
3 of interests. There is a showing of a legitimate potential
4 risk, without ascribing fault or wrongdoing. As has been
5 acknowledged here today and has been demonstrated consistently
6 throughout the events that give rise to the Indictment, there
7 are opposing points of view. There are competing interests
8 here.

9 Right now I'm focusing on the Government's obligation
10 to provide discovery, the defendant's right to have discovery.
11 No one has asked, yet, for a so-called gag order or some order
12 prohibiting any party from speaking to the media. It's well
13 known that parties have been. At least representatives of the
14 Government have been speaking. Certain defendants have been
15 speaking. It's happening. It is what it is.

16 We're going to work -- work on this to try to get a
17 fair limitation of disclosure of discovery that accomplishes
18 the risk we're -- I'm -- I am going to protect against. And
19 that is interference with a witness or retaliation to a
20 witness, threatening of a witness -- or even a party, a third
21 party. Someone who may not be a witness but someone whose
22 speech is being targeted because it's being reproduced as a
23 result of the discovery.

24 We need a way to define that narrowing appropriately.
25 And I know counsel can make significant headway on that. So

1 two weeks from today, a joint statement, please, that narrows
2 the scope of discovery in the interim. And, again, it's only
3 for an interim period. The form of order that was tendered
4 with the motion for protective order will be entered. But I'll
5 modify it to state that it is, as noted, interim.

6 Now, with the subject of discovery on the table, we
7 need to address, also, discovery management.

8 At the last hearing, I made an order that all
9 Government discovery would be produced through the Federal
10 Defender's Office CJA coordinator. That proved to be not the
11 appropriate approach.

12 What I need from the parties -- and here, it is again
13 going to have to be a joint effort, is a reasonable plan so
14 that the Government and defendants and the Court are satisfied
15 that discovery will move forward without any unnecessary
16 impediments and that there will be a clear way for the
17 Government to assure everyone that that which should be
18 produced is produced. I approve now the acquisition of some
19 third-party vendor on behalf of defendants collectively to help
20 organize electronic discovery, but I want you to work together
21 to let me know what specifications beyond that you'll need.

22 So the Government is within its rights to make the
23 point Mr. Barrow just made. That there are limitations on the
24 Court's authority to time the production of discovery. I very
25 much appreciate that the Government is simply moving forward.

1 There are ways the Court can deal with recalcitrant prosecutors
2 who don't want to produce a **Jencks** statement until a witness is
3 on the stand at trial, and there have been occasions where I've
4 noted the Court's authority to grant a recess until everybody's
5 ready to cross-examination. But that's not going to happen
6 here. I know you're all going to work together, and we're
7 going to try to get this case to a jury with all deliberate
8 speed but with respect to the process the Government has to
9 undertake and that which the defendants are entitled to
10 undertake. It is complicated.

11 Ms. Hay, do you have a particular suggestion with
12 respect to how to move the discovery management issue to
13 resolution in terms of timing and mechanism, and the like?

14 MS. HAY: Your Honor, I think Ms. Baggio is going to
15 address discovery for the defendants.

16 THE COURT: All right. Ms. Baggio, good morning.

17 MS. BAGGIO: Good morning.

18 THE COURT: Thank you for your efforts on behalf of
19 everyone.

20 MS. BAGGIO: Thank you, your Honor.

21 Your Honor, we are -- I would say preliminarily -- in
22 terms of principles, it's our position, jointly, that it's
23 really the Government's obligation to provide us the discovery.
24 But in this unique case, we are working with them to try to
25 make arrangements so that we can get our information --

1 THE COURT: Efficiently.

2 MS. BAGGIO: -- as quickly and as effectively as
3 necessary.

4 We have formed a subgroup to work together to
5 identify potential third-party vendors. But because there's a
6 bureaucratic aspect involved, we are required to get multiple
7 bids from different potential vendors, and we're trying to
8 figure out the right groups who cannot only host the
9 information for all of us but who can also provide additional
10 search support to assist us, again, in hopes of being both
11 efficient and effective.

12 THE COURT: And client-specific, without disregarding
13 the privileges and other issues among the varying defendants?

14 MS. BAGGIO: Exactly, your Honor. And we are making
15 our best efforts, and it is of penultimate importance for us to
16 identify that person as quickly as possible, or organization as
17 quickly as possible. So we are working on that from our end,
18 your Honor.

19 THE COURT: Ms. Baggio, it seems to me that unless
20 the defendants collectively want a specific court order, some
21 general discovery management order, I'm satisfied that that
22 representation and knowing that you're working and that --
23 these monthly status hearings would be the mechanism to bring
24 any specific discovery issues to the Court's attention.

25 Of course, we're working on the protective order

1 part. But if there's more to it than that, if you think it
2 would be in the interests of justice and efficiency for the
3 Court to enter a discovery management order, then what I would
4 charge you and your subgroup people to do is to confer with --
5 who's the discovery -- is that you, Mr. Barrow?

6 MR. BARROW: Yes, your Honor.

7 THE COURT: And to submit, then, a joint proposal for
8 a stipulated order. I'm fine with either approach.

9 MS. BAGGIO: Thank you, your Honor.

10 THE COURT: It seems to me you are moving forward.

11 Clearly the Government has heard the siren call; that
12 they must produce quickly and as much as they can, as soon as
13 they can. But I know that there's just been that initial
14 showing, and there's more to come.

15 So I want the Court's involvement, to the extent it's
16 necessary. But I also don't want to interfere and require work
17 that is not necessary on your part.

18 MS. BAGGIO: I appreciate that.

19 THE COURT: I will leave it to you, and it can come
20 up at the next status conference, then, as you propose.

21 I wanted to note that Judge Jones, who was presiding
22 in the Cooper case, has kindly agreed -- at my request -- to
23 handle all reviews of detention that are requested.

24 So with respect to Mr. Fry's motion, Mr. Olson, you
25 should docket that -- contact Judge Jones's chambers --

1 MR. OLSON: Okay.

2 THE COURT: -- and he will hear it.

3 With respect to Mr. Santilli, Mr. Coan, I understand
4 you're in front of Judge Papak this Friday --

5 MR. COAN: Okay.

6 THE COURT: -- for a review of the magistrate judges,
7 here.

8 I actually asked Judge Jones if he could just take
9 it, to save a step. But he is not available Friday. And I
10 understand there are prosecutors coming from elsewhere for
11 Friday.

12 MR. KNIGHT: (Nods head.)

13 THE COURT: So I don't want to interfere with what is
14 already scheduled. But to the extent there's any need for
15 review after that, again, docket it with Judge Jones.

16 So I'll be entering an order in this now-consolidated
17 case that whenever any party seeks a review of detention by an
18 Article III judge, it should go to Judge Jones. That will also
19 ensure a little quicker review and consistency across the
20 board.

21 MR. GABRIEL: Your Honor?

22 THE COURT: Yes.

23 MR. GABRIEL: On the matter of detention, in Judge
24 Jones's case, we have certain defendants who have been released
25 on conditions; other defendants who have been detained.

1 The Government does intend to dismiss that
2 Indictment -- or move to dismiss that Indictment.

3 So we do have a representative from Pretrial Services
4 here. We would ask that any preexisting release order or
5 detention order for a defendant --

6 THE COURT: I think I already said everything from
7 the Cooper case is preserved.

8 All of the rights reserved, all of the orders made,
9 all of the appointments. And I'll enter a specific order to
10 that effect.

11 Is that what you're asking?

12 MR. GABRIEL: Yes, your Honor. Thank you.

13 THE COURT: Okay. We'll be sure that all orders in
14 the Cooper case are deemed applicable to this. So the parties
15 are still subject to the same release conditions under this
16 case number, even though they were originally made in the other
17 case.

18 Is that -- is that clear enough for Pretrial's
19 purposes?

20 THE PRETRIAL OFFICER: Yes, your Honor.

21 THE COURT: Thank you.

22 Thank you, Mr. Gabriel.

23 All right. I want to address the matter of pretrial
24 motions and a litigation schedule. And I appreciate the
25 parties having addressed this in part.

1 Much of this is driven -- the timing of it will be
2 driven by the timing of a trial date. And the general calendar
3 that you've laid out in the status report would clearly not
4 work for a trial starting in September or sooner.

5 So I'm going to say that these motions need to be
6 advanced on a calendar that is earlier than what you describe.
7 And I want, within two weeks, a specific proposal.

8 I want you to assume trial is in September. And,
9 therefore, I want you to give me a more accelerated schedule to
10 make any motions.

11 You allowed a fair amount of time for briefing in
12 between sessions. I don't think that's necessary. I also do
13 not think it's necessary for you to budget time for reply
14 memoranda. Motion, response, hearing, reply on your feet in
15 the courtroom.

16 The motion is made on conferral in the first
17 instance, so the response shouldn't have to be delayed because
18 the responding party didn't know it was coming, didn't know
19 what the issues were, and needed to start on a clean slate.
20 We're going to need to move this more quickly.

21 So I propose that for the -- in -- in -- you give me
22 another schedule. And if -- depending on the degree to which
23 you can agree in a joint filing in two weeks, I may go ahead
24 and make an order. Otherwise, I'll make it at the April 6th
25 hearing.

1 But I want -- I want these issues brought to the
2 Court's attention much sooner, and potentially we don't need
3 three rounds. Maybe two.

4 The first round of motions that the defendants
5 anticipated did not require review of discovery by definition.
6 It seems to me those ought to be moving sooner, rather than
7 mid-April.

8 Ms. Baggio, concerns?

9 MS. BAGGIO: Thank you, your Honor.

10 My concern with the briefing schedule and setting a
11 firm trial date really derives from the fact that in order for
12 me to know what motions I might want to litigate, I need a
13 final charging instrument and I need the discovery --

14 THE COURT: I think you should assume this is the
15 final charging instrument. I do. And to the extent the
16 Government brings another one, we'll deal with it.

17 If it means severance of a new charging instrument to
18 an entirely different day and time, fine. I -- I -- I have to
19 do what I have to do. And so I'm regarding this current
20 charging instrument as the instrument.

21 (Indiscernible voice emitting over the telephone
22 line.)

23 THE COURT: And we -- especially in light of the
24 unified statements of every defendant about speedy trial, we
25 simply cannot wait to the time that was projected in the status

1 report for a first round of motions, a second, and a third, and
2 still be ready to speak with the jury early in September. It
3 just can't be done.

4 So I think two rounds of motions ought to be your
5 goal. I think you should squeeze out the time, condense it by
6 eliminating an issue for reply. I think you should aim for
7 arguments on the dates already indicated.

8 So back your motions up to a status hearing date so
9 that a response comes in two weeks before and the motion is
10 filed two weeks before that, and we could -- we could deal with
11 many of these things at the May hearing. I think you need to
12 think more pressed in terms of time.

13 And I appreciate it's a big deal, but I know there
14 were some challenges that have nothing to do with the
15 Indictment -- I mean, nothing to do with the discovery
16 production; everything to do with the Indictment. Consider
17 this the Indictment, and let's move.

18 MS. BAGGIO: I will do so. Thank you, your Honor.

19 THE COURT: So did I say when that was to be
20 submitted? Did I say when?

21 THE ATTORNEYS: Two weeks.

22 THE COURT: Two weeks. Two weeks. That's a good
23 time. Two weeks for a joint proposed schedule on pretrial
24 motions.

25 Now, this is separate and apart from a pretrial

1 conference and the trial motions. So what I want here is not
2 the motion in limine at trial, is not the motion to exclude
3 this evidence or that. But it's anything that is in the
4 nature -- and it may not happen here. But a motion to
5 suppress, an evidentiary hearing. I heard from Mr. Arnold last
6 time that there was going to be a challenge to the Indictment
7 then coming.

8 So those things ought to be discussed among you
9 collectively. And a joint proposal, to the extent you can make
10 it, fine. Again, if your proposals diverge, say so in the
11 filing. This proposal is made on behalf of these defendants.
12 This proposal is made on behalf of the Government. Others
13 don't care or don't have an opinion, whatever.

14 Tell me what your scheduling proposals are within two
15 weeks.

16 Yes, Ms. Shipsey?

17 MS. SHIPSEY: Your Honor, to the extent that this is
18 relevant to the dates, many of us are in that larger case in
19 front of Jones, as you noted.

20 Offer -- plea offers in that case just recently went
21 out. And yesterday the defense group, as a whole, made a
22 request that that be set over.

23 There may be a request to Judge Jones to set the
24 trial over as well. And I think the Court noted in our last
25 hearing on this case that the Court may be willing to work with

1 other courts if it deems it necessary. So I wanted to bring
2 that up because I don't --

3 THE COURT: The only reason I made the point is that
4 Judge Jones himself mentioned to me this morning the November
5 26 date, and alerting me to take care not to -- not to commit
6 you all to two places at once. And my solution to that is to
7 move the trial date sooner.

8 MS. SHIPSEY: And to the -- to the extent that the
9 defense counsel in that -- that other case moves -- is
10 requesting to move that case out further because of where we
11 are --

12 THE COURT: Then that won't be an issue.

13 But then all of the people in the room who are
14 asserting a right to a speedy trial still are going to get it.
15 I'm going to move the matter as -- as best I can --

16 MS. SHIPSEY: Thank you.

17 THE COURT: -- to a trial as soon as I can.

18 I do need to know whether it's a trial of 26; or it's
19 a trial of 11, followed by a trial of 8, followed by a trial of
20 7. I need to know what your views are.

21 But right now my presumption is a trial of everyone
22 as soon as feasible, and we all work very hard to move that
23 forward.

24 MS. SHIPSEY: We'll note in the next status report
25 the status of that case.

1 THE COURT: You may want to give input of it, to the
2 extent you can, on this scheduling part.

3 But I --

4 (Telephonic dial tone.)

5 THE COURT: Counsel, can you see if your client lost
6 connection?

7 Go ahead and use your telephone here. You're free to
8 stay where you are to do that.

9 MS. HARRIS: (Nods head.)

10 THE COURT: All right. Thank you, Ms. Shipsey.

11 With respect to the joint -- or to the status
12 hearings, I did note in the agenda I sent out that the first
13 Wednesday of June is not available. I'm committed on a
14 national assignment that I must be out of the district that
15 day.

16 So I can do the hearing the day before, the Tuesday,
17 which would be the last day of May. Or I can -- we can move it
18 to the following Wednesday.

19 Votes in favor of Tuesday?

20 Nobody.

21 MR. AUDET: (Raises hand.)

22 THE COURT: One.

23 The following Wednesday, then?

24 Yes?

25 (Hands raised.)

1 THE COURT: Well, then we'll just move it to the
2 following Wednesday. So that is -- Mr. Minetto, is that the
3 7th? I think June 7.

4 MR. SCHINDLER: Your Honor, I'm sorry. Mr. Salisbury
5 specifically asked me to request that status conferences not be
6 set for the second Wednesday of the month because he has a
7 standing meeting with the Port of St. Helens. He represents
8 the Port. So he would not be -- I mean, I can cover for him at
9 those meetings, obviously, if need be. But he did specifically
10 ask me to raise that scheduling issue with the Court. I wanted
11 to make sure to do that.

12 THE COURT: All right. Thank you for letting me know
13 that.

14 Tell him this is a one-time issue. And if he needs
15 to be heard further, to be here on the first Wednesday because
16 he doesn't have a conflict that date, right?

17 MR. SCHINDLER: Got it, yes.

18 MS. SHERTZ: Your Honor, for clarification, I think
19 that's actually June 8th, Wednesday.

20 THE COURT: All right. Thank you. Seven days in a
21 week. One plus seven is eight.

22 Oh, I'm out June 8.

23 All right. Let's see. Hold on. Let's get this
24 solved.

25 (Pause, conferring.)

1 THE COURT: Well, all right. Would it be a hardship
2 for the parties to do the June conference on Tuesday, May 31;
3 the Tuesday, rather than Wednesday, June 1? Does anybody see
4 that as a hardship right now?

5 (No response.)

6 THE COURT: All right. The June status hearing will
7 be on Tuesday, May 31, not Wednesday. And I realize this is a
8 burden to the marshals, too, because they've set up assistance
9 to help us. But for -- yes?

10 MS. BAGGIO: I'm sorry. I cannot on the 31st. If
11 someone else can represent on my behalf, your Honor. I am not
12 available May the 31st or 1st.

13 THE COURT: And, Mr. Rainwater?

14 MR. RAINWATER: I will be flying back from France on
15 that day, but I won't be here till late.

16 THE COURT: Well, the alternative is to move it to
17 the -- to June 15. Which, Mr. Schindler, is the third
18 Wednesday of the month.

19 MR. RAINWATER: That's fine.

20 MR. SCHINDLER: I think that's going to be fine, your
21 Honor.

22 THE COURT: Does anybody object to the June matter
23 being -- yes.

24 MS. MAXFIELD: I will can cover for Ms. Baggio, or
25 she can cover for me. But I will not available on the third

1 Tuesday in June. I will be in Italy.

2 THE COURT: All right. Would you cover then, please,
3 so that we can do it on the 15th?

4 MS. BAGGIO: Yes, your Honor.

5 THE COURT: All right. June 15. The status
6 hearings -- now, please note, nine o'clock a.m.

7 I want feedback from counsel through the courtroom
8 deputy --

9 Mr. Kohlmetz?

10 MR. KOHLMETZ: I'm sorry.

11 THE COURT: Is there an issue?

12 There's talking going on --

13 MR. KOHLMETZ: I apologize.

14 THE COURT: -- and I'm wondering if people are trying
15 to make a point or just chat.

16 MR. KOHLMETZ: No, there was some discussion with
17 counsel.

18 THE COURT: With respect to the room layout, we tried
19 hard to make it better than last time. I hope you found this a
20 little better, but I know you may have suggestions. So if you
21 do, please let Ms. Boyer know. The suggestions need to be
22 reviewed with the marshal, as well.

23 There isn't any way we can conduct a jury trial, I
24 think, this way but I don't know. We will see.

25 What I've learned is that the square footage here, in

1 this well, is larger and more plentiful than that on the 16th
2 floor, and that's why this room was taken. It's not presently
3 being used on an active basis. The idea is to keep the tables
4 set up.

5 There are other cases -- Ms. Shipsey's case, and so
6 forth -- other cases with multiple defendants that will be
7 using this kind of setup. So if you have ideas, please give
8 them to Ms. Boyer, about -- about that setup.

9 We are going to need a plan that I think needs to
10 include input from the parties at the front end about the
11 handling of the jury. And that is the -- the manner in which
12 the initial summonses go, a jury questionnaire, potentially
13 anonymity of the jurors and the like because of a lot of risks,
14 and other issues that have been discussed.

15 So I want each side to designate representatives to
16 speak together. And for the next status hearing, I want your
17 preliminary thoughts on what needs to be in a jury plan in
18 order adequately to protect -- to get enough jurors summoned
19 who would be qualified to serve. That includes, of course,
20 the -- a projection about how long service would be and how
21 many people would be disqualified because of familiarity or
22 strong opinions on a subject that has caused a lot of
23 discourse.

24 So I'm interested in your perspectives, and I want a
25 joint submission at the next status hearing about your thoughts

1 on how best to accomplish that. That is -- that being
2 summoning enough potentially qualified jurors that, after a
3 voir dire process that will have to be a little different than
4 what we're used to -- given numbers -- will produce a jury that
5 can try the case. I need your recommendations on the number of
6 alternates you think that you would want. How jury challenges
7 would go in a case with 26 defendants. How -- how they should
8 be allocated, the numbers, and the like. So I want your
9 preliminary thoughts there.

10 Again, it is important for the record that every time
11 a defendant waives personal appearance there be a signed waiver
12 for every hearing. I'm going to continue to insist on that
13 because it is a reminder to that person, by signing each
14 time -- I know it's a bit of repetition. But it's a reminder
15 there is a right to attend and that a person is giving that up.

16 By the way, Counsel, were you able to reach your
17 client? Was there an issue?

18 MS. HARRIS: No.

19 THE COURT: Okay. Well, not very good, but I
20 understand.

21 We asked before if any defendant who is in custody
22 seeks to waive appearance, that needs to be filed the Thursday
23 two weeks before. Two weeks before for any in-custody person.
24 I doubt any of you do. But if you do, it's a matter of
25 staffing for the United States marshals, and I appreciate your

1 working with us on that. For those who are out of custody, one
2 week before.

3 And we'll say (pause, referring) -- oh, with respect
4 to the start time, I earlier said nine o'clock. I misspoke.
5 To accommodate the marshal's duties, we need to start at 9:30.

6 I'm going to ask that counsel start practice -- the
7 practice of arriving much earlier than nine o'clock, then;
8 8:30. So that you can use the time that you're together.
9 No. 1, it's an opportunity to confer. And, No. 2, to take --
10 to try to avoid things that happen to any of us in coming, that
11 delay all of us starting on time. And then we'll -- we'll
12 start on time at 9:30.

13 I want to review my list, and then I'll be asking if
14 you have other matters to address.

15 When you -- when you do submit your proposed -- your
16 statement on a proposal for motions scheduling, if you can
17 identify generally the subject of the motions that you already
18 know you think you want to file, that will help me evaluate the
19 timing request.

20 All right. Does the Government have any other
21 matters to address today?

22 MR. KNIGHT: No, your Honor.

23 THE COURT: All right. Anybody on behalf of
24 defendants, anything else?

25 Yes, Ms. Shipsey.

1 MS. SHIPSEY: May I just suggest, your Honor, for
2 purposes of the trial and these hearings, that defense counsel
3 in this case be able to get some type of court ID that could
4 maybe further our ability to get in a little bit quickly? When
5 we all have laptops, bags, et cetera, it's a pretty cumbersome
6 process, especially during trial and motions hearings.

7 THE COURT: I think that is a good matter to take up
8 in discussion with a representative of the United States
9 Marshal's Office and the Government. So a joint proposal.

10 MS. SHIPSEY: I will do that, your Honor.

11 THE COURT: Pursue it, and see if something can work.

12 MS. SHIPSEY: The second would be if we could get
13 maybe a large room when we have hearings and looking forward to
14 trial, so that during breaks defense counsel can confer as a
15 group when needed.

16 THE COURT: Yes. Well, this morning you'll have the
17 room, as soon as we're finished --

18 MS. SHIPSEY: Yes.

19 THE COURT: -- and the marshals have escorted the
20 clients out and the public is gone, you'll have the room to do
21 a meeting.

22 MS. SHIPSEY: Thank you.

23 THE COURT: All right. Ms. Shertz.

24 MS. SHERTZ: Your Honor, I just wanted to note
25 briefly, in addition to the case that Ms. Shipsey cited --

1 which I also have and I know probably at least a half-dozen of
2 us have, there's another case in front of Judge Simon that's
3 currently scheduled for trial September 20th. And that's Case
4 No. 15-349.

5 And, looking around, I'm going to guess there's at
6 least ten of us on that case.

7 THE COURT: That case was filed after this 16-51
8 case. Right?

9 MS. SHERTZ: It's a 15-349 case.

10 THE COURT: Never mind. All right.

11 MS. SHERTZ: The point being, there's a whole bunch
12 of really big cases right now that we all got loaded up right
13 before this one. I just wanted to point out, when you were
14 looking at September dates, that that one is there. I don't
15 know what the status is going to be in terms of whether it will
16 go or not. But sort of to plan for that.

17 THE COURT: Thank you for noting that.

18 Yes, Ms. Wood.

19 MS. WOOD: Your Honor, just as to Mr. Ritzheimer, the
20 marshals had agreed to hold him downstairs temporarily for a
21 Pretrial Services interview.

22 I just -- I don't know if that got communicated.

23 THE COURT: Today, you mean?

24 MS. WOOD: Today, yes. So I just want to make sure
25 he doesn't get lost in the shuffle. We'll be right down.

1 THE MARSHAL: Your Honor, we're aware of that. He
2 will be there.

3 THE COURT: Thank you. Thank you. That will happen.
4 Anything else, then, for the record?

5 Yes, Mr. Rainwater.

6 MR. RAINWATER: I am just letting the Court know that
7 in May I will be in France the whole month. Is it possible, in
8 the May conference, for me to call in?

9 THE COURT: Yes. But that's a matter to take up with
10 the clerk. There are ways.

11 MR. RAINWATER: Okay.

12 THE COURT: But it would be good if you had a
13 substitute personally present, too.

14 MR. RAINWATER: Okay.

15 THE COURT: All right. Thank you, everyone, for your
16 work getting organized for today; for your participation here.

17 Please give Ms. Boyer any feedback you want us to
18 consider regarding the way the room was set up.

19 I would like all of the members of the public to
20 please leave the courtroom now. The Government's counsel to
21 please leave the courtroom now. Defense counsel -- defense
22 counsel, please stay in the room now.

23 (Conclusion of proceedings.)
24
25

Certificate

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--oOo--

I certify, by signing below, that the foregoing is a correct stenographic transcript of the oral proceedings had in the above-entitled matter this 17th day of June, 2016. A transcript without an original signature or conformed signature is not certified. I further certify that the transcript fees and format comply with those prescribed by the Court and the Judicial Conference of the United States.

/S/ Amanda M. LeGore

AMANDA M. LeGORE, CSR, RDR, CRR, FCRR, CE
CSR No. 15-0433 EXP: 3-31-2018